2302.

SUPREME COURT OF THE UNITED STATES.

No. 203.

ELISHA BLOOMER, APPELLANT,

vs.

JOHN W. McQUEWAN, ALLEN B. McQUEWAN, AND SAMUEL DOUGLASS, PARTNERS UNDER THE FIRM OF McQUEWANS AND DOUGLASS.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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[Gideon, Print.]

Among the records and judicial proceedings of the circuit court of the United States, for the western district of Pennsylvania, may be found the following words and figures, viz:

Elisha Bloomer
vs.
John McQuewan, Allen B. McQuewan, and Samuel Douglass, partners under the firm of McQuewan and Douglass.
} No. 6 of November term, 1850.

In chancery.

And heretofore, to wit, on the 6th day of July, one thousand eight hundred and fifty, comes the complainant, by his counsel, Shaler and Stanton, and files the following bill of complaint:

Copy of bill.

Circuit court of the United States, for the western district of the State of Pennsylvania.

Elisha Bloomer
vs.
John McQuewan, Allen B. McQuewan, and Samuel Douglass, partners under the firm of McQuewans and Douglass.
} In equity.

To the honorable the judges of the circuit court of the United States, for the western district of the State of Pennsylvania.

Humbly complaining shews unto your honors, your orator, Elisha Bloomer, of the city of New York, in the State of New York, that on or about the twenty-seventh day of December, one thousand eight hundred and twenty-eight, under the then existing laws of Congress, were duly issued to William Woodworth, jr., the inventor, letters patent of the United States for an improvement or machine for planing, tongueing, and grooving boards, plank, and other material, of the tenor and effect following, viz:

Original letters.

The United States of America, to all whom these letters patent shall come:

Whereas William Woodworth, a citizen of the United States, hath alleged that he has invented a new and useful improvement in the method of planing, tongueing, grooving, and cutting into mouldings or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings on, or facing metallic, mineral, or other substances, which improvements, he states, have not been known or used before his application; hath made oath that he doth verily believe that he is the true inventor or discoverer of the said improvement; hath paid into the Treasury of the United States the sum of thirty dollars; delivered a receipt for the same, and presented a petition to the Secretary of State, signifying a desire of obtaining an exclusive property in the said improvements, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said William Woodworth, his heirs, administrators, or assigns, for the term of fourteen years from the 27th of December, 1828, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William Woodworth himself, in the schedule hereto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made [SEAL.] patent, and the seal of the United States to be hereunto annexed.

Given under my hand at the city of Washington, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and twenty-eight, and of the independence of the United States of America the fifty-third

(Signed) By the President: J. Q. ADAMS,
(Signed) H. CLAY,
Secretary of State.

CITY OF WASHINGTON, *to wit:*

I do hereby certify, that the foregoing letters patent were delivered to me on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and twenty-eight, to be examined; that I have examined the same, and find them conformable to law; and I do hereby return the same to the Secretary of State within fifteen days from the date aforesaid, to wit, on the twenty-seventh day of December, in the year aforesaid.

(Signed) WILLIAM WIRT,
Attorney General of the United States.

(And for a full and accurate description of the said invention, your orator will hereinafter set forth the language of the specification, and affix thereto the figures and representations.

And your orator further shews unto your honors, that on or about the ninth day of February, one thousand eight hundred and thirty-nine, the said William Woodsworth departed this life, intestate, at the city of New York, his then place of residence; and that on or about the fourteenth day of February, last aforesaid, letters of administration upon his estate were, by the surrogate of the city and county of New York, duly granted to his son, William W. Woodworth, who, as such administrator, duly entered upon the duties of his trust.

And your orator further shows unto your honors, that on or about the twentieth day of July, one thousand eight hundred and forty-two, the said William W. Woodworth, as administrator as aforesaid, did, in writing, make, to the Commissioner of Patents of the United States, application for an extension of the said letters patent, and such proceedings were thereupon had under the laws of the United States, in such case made and provided, that on or about the sixteenth day of November, in the year last aforesaid, the said Commissioner did, by making a certificate thereon of such extension, renew and extend said letters patent for the term of seven years from and after the expiration of the first term, to wit, from the 27th of December, 1842, to the 27th of December, 1849, as by the record in the United States Patent office, at the city of Washington, will more fully appear, and to which, or to an authenticated copy thereof, your orator prays leave to refer.

And your orator further shows unto your honors, that on or about the eleventh day of January, 1844, William W. Woodworth, as administrator as aforesaid, did, by a deed of that date, which has been duly recorded in said Patent office, at the city of Washington aforesaid, grant, assign, and convey to one James G. Wilson all the right, title, and interest which he, the said William W. Woodworth, as administrator as aforesaid, then had, of, in, and to the said letters patent, saving and excepting only the right to make, use, and vend the said patented machine in the State of Vermont.

And your orator further shows unto your honors, that on or about the 26th day of February, 1845, was in due form passed and approved an act of Congress of the United States, and in accordance therewith, on or about the 3d day of March, 1845, was made a certificate by the Commissioner of Patents, whereby said patent was further extended for the term of seven years from and after the 27th day of December, 1849, as by reference to said act and to the records in the Patent office will more fully appear, which said certificate and act are in the words and figures, or to the effect following, viz:

Patent office, *March 3d*, 1845.

Whereas the Congress of the United States have passed an act, of which the following is a true copy, viz:

An act to extend a patent heretofore granted to William Woodworth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the patents granted to William Woodworth on the twenty-seventh day of December, in the year one thousand eight hundred and twenty-eight, for his improvement in the method of planing, tongueing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness, and also for facing and dressing brick and cutting mouldings on, and facing several other substances, a description of which is given in a schedule annexed to the letters patent, granted as aforesaid, be, and the same is hereby, extended for the term of seven years from and after the twenty-seventh day of December, in the year one thousand eight hundred and forty-nine, and the Commissioner of Patents is hereby directed to make a certificate of such extension in the name of the administrator of the said William Woodworth, and to append an authenticated copy thereof to the original letters patent whenever the same shall be requested by the said administrator or his assigns.

Approved February 26, 1845.

A true copy from the roll in this office.

R. K. CRALLE,
Chief Clerk.

Department of State, March 3, 1845.

Commissioner's certificate of extension.

Whereupon, in conformity with the requisition in said act of Congress set forth, the Commissioner of Patents, on the **3**d day of March, A. D. 1845, affixed to said letters patent his certificate in the words following, to wit:

In conformity, therefore, with the directions in the said act contained, I, Henry L. Ellsworth, commissioner of patents, do hereby certify, that the patent therein described is, by the said act extended to William W. Woodworth, administrator of said William Woodworth, for the term of seven years from and after the twenty-seventh day of December, in the year one thousand eight hundred and forty-nine; and this certificate of such extension is made on the original letters patent, on the application of William W. Woodworth, the administrator of the said William Woodworth.

In testimony whereof I have caused the seal of the Patent office to be hereunto affixed, this 3d day of March, 1845.

[SEAL.]

HENRY L. ELLSWORTH,
Commissioner of patents.

And your orator does further state and show to your honors, that the said William W. Woodworth, as administrator aforesaid, on the 8th day of July, A. D. 1845, did make a formal surrender of said original letters, in conformity with the laws provided in such cases for the purpose of obtaining a renewal of the same, upon a specification accompanied with drawings and figures of the said machine, describing the said invention, and pointing out in what it consists, in more full, clear, and exact terms, than was done in the original specification.

Surrender and renewal.

Whereupon, on said 8th day of July, A. D. 1845, a renewal of said letters patent was made and granted from the Patent office of the United States, in due form of law, upon said amended specification, figures, and drawings; and the said amended specification, with the explanatory drawings, and the said letters patent, are, as will appear by the records of the Patent office, duly authenticated; copies of which shall be produced as your honors may direct, in the words and figures following, to wit:

The schedule referred to in these letters patent, and making part of the same.

Amended specification

To all to whom it may concern.

Be it known, that the following is a full, clear, and exact description of the method of planing, tongueing, and grooving plank and boards invented by William Woodworth, deceased, and for which letters patent of the United States were granted to him on the 27th day of December, in the year one thousand eight hundred and twenty-eight, the said letters patent having been surrendered for the purpose of describing the same invention, and pointing out in what it consists in more clear, full, and exact terms than was done in the original specification.

The plank or boards which are to be planed, tongued, or grooved, are first to be reduced to a width by means of circular saws, by reducing wheels, or by any other means. When circular saws are used for this purpose, two such saws should be placed upon the same shaft, on which they are to be capable of adjustment, so that they may be made to stand at any required distance apart; under these, the board or plank is to be forced forward and brought to the width required; this apparatus and process do not require to be further explained, they being well understood by mechanicians.

When what has been above denominated reducing wheels are used, these are to consist of revolving cutter wheels, which resemble, in their construction and action, the planing and reducing wheel to be presently described; these are to be made adjustable, like the circular saws; but the latter are preferred for this purpose. The plank may be reduced to a width on a separate machine.

When the plank or boards have been thus prepared, (on a separate machine) they may be placed on or against a suitable carriage resting on a frame or platform, so as to be acted upon by a rotary cutting or planing and reducing wheel, which wheel may be made to revolve either horizontally or vertically, as may be preferred. The carriage which sustains the plank or board to be operated upon may be moved forward by means of a rack and pinion, by an endless chain or band, by geared friction rollers, or by any of the devices well known to machinists for advancing a carriage or materials to be acted upon in machines for various purposes. The plank or board is to be moved on towards the cutting edges of the cutters or knives on the planing cylinder, so that its knives or cutters, as they revolve, may meet and cut the plank or board in a direction contrary to that in which it is made to advance; the edges of the cutters are, in this method, prevented from coming first into contact with its surface, and are made to cut upwards from the reduced part of the plank towards said surface, by which means their edges are protected from injury by gritty matter, and the board or plank is more evenly and better planed *that* when moved in the reverse direction.

After the board or plank passes the planing cylinder, and as soon or fast as the planing cylinder has done its work on any part of the board or plank, the edges are brought into contact with two revolving cutter wheels, one of which wheels is adapted to the cutting of the groove, and the other to the cutting of the two rebates that form the tongue. When the axis of the planing and reducing wheel stands vertically, the grooving and tongueing wheels are placed one above the other with the plank edgewise between them. When the axis of the planing wheel stands horizontally, the wheels are on the same horizontal plan with each other, standing on perpendicular spindles.

The grooving wheel consists of a circular plate fixed on an axis, and having one, two, three, four, or more cutters, which are to be screwed, bolted, or otherwise attached to it; the edges of which cutters project beyond the periphery of the plate, to such distance as is required for the depth of the groove; their thickness may be such as is necessary for its width; they are of course so situated as to cut the groove in the middle of the edge of the board, or as nearly so as may be required. The tongueing wheel is similar in form to the grooving wheel, but it has cutters on each of its sides, or otherwise so formed and arranged as to cut the two rebates which are necessary to the formation of the tongue. The grooving and tongueing cutters, at the same time, and by the same operation, reduce the board or plank to an exact width throughout. When the axis of the planing wheel is placed vertically, the knives or cutters may be made to plane two planks at the same time; the planks being in this case moved in contrary directions, and so as to meet the edges of the revolving knives or cutters.

When the machine is thus constructed, a second pair of grooving and tongueing wheels may be made to operate in the same way with those above described. A machine to operate upon a single plank or board, and having the axis of the planing wheel placed horizontally, will, however, be more simple and less expensive than that intended to operate on two planks simultaneously.

In the accompanying drawing, fig. 1 is a perspective representation of the principal operating parts of the machine when arranged and combined for planing, tongueing, and grooving; and when so arranged as to be capable of planing two planks at the same time the axis of the planing wheels being placed vertically, A A is a stout substantial frame of the machine, which may be of wood or of iron, and may be varied in length, size, and strength according to the work to be done.

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B B are the heads of the planing cylinder, and C C the knives or cutters, which extend from one to the other of said heads, to the peripheries of which they may be attached by means of screws. The knives C C, with the faces forming a planing angle, may be placed in a line with the axis, J, of the cylinder, or they may stand obliquely thereto, as may be preferred; but in the latter case the edge should form the segment or portion of a helix; b represents a pulley near to the upper end of the axis J; and I, a pully or drum which may be made to revolve by horse, steam, or other motive power, and from which a belt may extend around the pully b, to drive the planing cylinder and other parts of the machinery. G is the carriage which is represented as being driven forward by means of a rack and pinion H; against this carriage the plank K, which is to be planed, tongued, and grooved, is placed, and is made to advance with it. It will be manifest, however, that the plank may be moved forward by other means, as, for example, by an endless chain or band passing around drums or chain wheels, or by means of geared friction wheels born up against it. To cause the carriage and plank to move forward readily there may be friction rollers, f f f, placed horizontally and extending under them; the rollers, f f f, which stand vertically, are to be made to press against the plank and keep it close to the carriage, and thus prevent the action of the cutters from drawing the plank up from its bed; in cutting from the planed surface upwards, they may be borne against it by means of weights or springs, in a manner well known to machinists. In a single horizontal machine, the horizontal friction rollers may be geared, and the pressure rollers placed above them to feed the board with or without the carriages, a bed plate being used directly under the planing cylinder.

Fig. 2 is a separate view of the planing cylinder with its knives or cutters, and fig. 3 an end view of one of the heads. E E are the revolving cutters or tongueing and grooving wheels, and D D whirls upon their shaft, which may be driven by bands or otherwise, so as to cause said wheels to revolve in the proper direction.

Fig. 4 is a side view of one of these wheels, fig. 5 is an edge view of the tongueing wheel, and fig. 6 an edge view of the grooving wheel, the latter being each shown with two cutters in place. The number of cutters on these wheels may be varied, but they are represented as furnished with four. The cutters may be fixed on the sides of circular plates, with their edges projecting beyond the periphery of said plate.

The edges of the plank, as its planed part passes the planing cylinder, are brought in contact with the above described tongueing and grooving wheels, which are so placed upon their shafts as that the tongue and groove shall be left at the proper distance from the face of the plank. the latter being sustained against the planing cylinder by means of the carriage or bed plate, or otherwise, so that it cannot deviate, but must be reduced to a proper thickness, and correctly tongued and grooved.

In fig. 1, above referred to, only one carriage and one pair of cutter wheels are shown, it not being deemed necessary to represent those on the opposite side, they being similar in all respects.

Fig. 7 represents the same machine with the axis of the planing cylinder placed horizontally, and intended to operate on one plank only at the same time. A A is the frame; B B the heads of the planing cylinder; C C the knives or cutters attached to said heads. To meet the different thicknesses of the planks or boards the bearing of the shaft or cylinder may be made moveable by screws or other means to adjust it to the work, or the carriage or bed plate may be made so as to raise the board or plank up to the planing cylinder. E and E′ are the revolving cutters or tongueing and grooving wheels, which are placed upon vertical shafts, having upon them pulleys. D D, around which pass belts or bands from the main drum I, to which a revolving motion may be given by any adequate motive power.

From the drum I a belt L passes, also around the pulley b, on the shaft of the planing cylinder, and gives to it the requisite motion. There may in this machine be a horizontal carriage moved forward by a rack and pinion, in a manner analogous to that represented in figure 1, but in the present instance the plank is supposed to be advanced by means of one or two pairs of friction or feed rollers, shown at f f′, the uppermost f′ f′ of the pairs of rollers may be held down by springs or weighted levers, which it has not been thought necessary to show in this drawing, as such are in common use. The lowermost of these rollers may be fluted or made rough on their surfaces, so as to cause friction on the under side of the plank. M M′ are pulleys on the axles of these lower rollers, which are embraced by bands N N′, which also pass around a pulley, O, on a shaft which crosses the frame A A, and has a pulley, T, on it, which is embraced by the belt P on a pulley Q, on the shaft of the main drum I; these bands and pulleys serve to give motion to the feed rollers, as will be readily understood by inspecting the drawing. R R are guide strips used in place of the rollers used for the same purpose, and also for bearing or friction rollers; when the machine is vertical, to direct one edge of the plank, and against its opposite edge, any pressure may be used equal to the weight of the board or plank, when worked in vertical position. One of the cutter wheels should be made adjustable to adapt it to stuff of different widths.

The planing cylinder, and likewise the cutter or tongueing and grooving wheels, may be constructed in the manner represented in figures 2, 3, 4, 5, and 6, and herein before fully described. One of the heads of the planing wheel may be made moveable to accommodate its width to the width of the boards or plank to be planed.

The respective parts of this machine may be varied in size, as may also the velocity of the motion of the planing cylinder and cutter wheels; but the following has been found to answer well in practice: The planing cylinder, having four knives or cutters, may be twelve inches in diameter, and may make two thousand and upwards revolutions in a minute. In a machine like that shown in fig. 7, the main drum I may be two feet in diameter, and may be driven with the speed of five hundred and upwards revolutions in a minute. The pulleys on the planing cylinder, and on the cutter wheels, may be six inches in diameter.

The plank should be moved forward at the rate of about one foot for every hundred revolutions of the cutter wheel; and of course the diameter of the feed rollers, and of the pulleys by which they are turned, must be so graduated as to produce this result. The size and speed of the above parts of this machine may be in some degree varied; but the above have been found to work well.

Having thus fully described the part, and combination of parts, and operation of the machine for planing, tongueing, and grooving boards or plank, and shown various modes in which the same may be constructed and made to operate without changing the principle or mode of operation of the machine, what is claimed therein as the invention of William Woodworth, deceased, is the employment of rotating planes, substantially such as herein described, in combination with rollers, or any analogous device to prevent the boards from being drawn up by the planes when cutting upwards, or from the reduced or planed, to the unplaned surface as described.

And also the combination of the rotating planes, with the cutter wheels for tongueing and grooving, for the purpose of planing, tongueing, and grooving boards, &c., at one operation as described. And also the combination of the tongueing and grooving cutter wheels, for tongueing and grooving boards at one operation as described.

And, finally, the combination of either the tongueing, or the grooving cutter wheel, for tongueing or grooving boards, &c., with the pressure rollers as described, the effect of the pressure rollers in these operations being such as to keep the boards, &c., steady and prevent the cutters from drawing the board towards the centre of the cutter wheels, whilst it is moved through by machinery.

In the planing operations the tendency of the plane is to lift the boards directly up against the rollers, but in the tongueing and groovign, the tendency is to overcome the friction occasioned by the pressure of the rollers.

WILLIAM W. WOODWORTH,
Administrator of William Woodworth, deceased.

Witnesses—JAMES MILHOLLAND
CAS. M. KELLER.

The United States of America, to all to whom the letters patent shall come:

Whereas William W. Woodworth, administrator of William Woodworth, deceased, of Hyde Park, New York, has alleged that said William Woodworth invented a new and useful improvement in machines for planing, tongueing, and grooving, and dressing boards, &c., for which letters patent were granted, dated the 27th day of December, 1828, which letters patent have been extended, as will appear by the certificates appended thereto, copies of which are hereto attached, for fourteen years, from the expiration of said letters patent, and which letters patent are hereby cancelled on account of a defective specification, which he states has not been known or used before said William Woodworth's application; has made oath that he is, and that said William Woodworth was, a citizen of the United States; that he does verily believe that said William Woodworth was the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of fifteen dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said William W. Woodworth, in trust for the heirs at law of the said William Woodworth, their heirs, administrators, or assigns, for the term of fourteen years from the twenty-seventh day of December, one thousand eight hundred and twenty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William W. Woodworth, in the schedule hereto annexed, and is made part of these presents.

[SEAL.] In testimony whereof I have caused these letters to be made patent, and the seal of the Patent office has been hereunto affixed.

Given under my hand at the city of Washington, this eighth day of July, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the seventieth.

JAMES BUCHANAN,
Secretary of State.

Countersigned and sealed with the seal of the Patent office.

HENRY H. SYLVESTER,
Acting Commissioner of Patents.

And your orator further shows unto your honors, that the said William W. Woodworth, as administrator as aforesaid, did, by a certain deed of assignment, dated the fourteenth day of March, one thousand eight hundred and forty-five, and also by a further deed of assignment, dated the ninth day of July, one thousand eight hundred and forty-five, convey unto James G. Wilson aforesaid all the right, title, and interest of him, the said William W. Woodworth, as administrator as aforesaid, in, of, and to the said letters patent, *for* therein created and extended by said act, to wit, for the term of seven years from and after the twenty-seventh day of December, one thousand eight hundred and forty-nine, which said assignments were duly recorded in the Patent office of the United States, at the city of Washington aforesaid, as will more fully appear by a copy of the records thereof, duly authenticated and ready to be produced in court as your honors may require.

And your orator further shows unto your honors, that on or about the twenty-fourth day of June, one thousand eight hundred and forty-seven, the said James G. Wilson did, under his hand and seal, execute and deliver to your orator a certain agreement or instrument in writing, in the words and figures following, viz:

This agreement, made the twenty-fourth day of June, 1847, between James G. Wilson, of the city of New York, and Elisha Bloomer, of the city of New York, witnesseth:

That whereas William Woodworth, deceased, did, in his lifetime, obtain letters patent from the United States, bearing date the 27th day of December, 1828, for a certain machine for planing, tongueing, and grooving plank, &c.

And whereas William W. Woodworth, administrator of the said William Woodworth, the said patentee, obtained an extension of the said letters patent for the term of seven years from and after the expiration thereof, to wit, from the 27th day of December, 1842, pursuant to law:

And whereas by an act of Congress passed on the 26th day of February, 1845, the said letters patent were further extended for the term of seven years from and after the 27th day of December, 1849, to the said William W. Woodworth, administrator as aforesaid:

And whereas the said letters patent have, since the passage of the said act, been surrendered for a defective specification, and new letters patent have been issued, which bear date on the eighth day of July, 1845, and were issued to the said administrator:

And whereas the said William W. Woodworth, administrator as aforesaid, has conveyed unto James G. Wilson aforesaid by deed of assignment, dated on the 14th day of March, 1845, and duly recorded, and also by further deed, dated on the 9th day of July, 1845, and also recorded, all the right, title, and interest of the said William W. Woodworth, administrator as aforesaid, of, in, and to the said letters patent, and the franchises thereby granted and secured for the said term of seven years, created and extended by the said act of Congress, that is to say, for the term of seven years from and after the 27th day of December, 1849:

Now know all men, that the said James G. Wilson, in consideration of the sum of twenty-five thousand dollars, to him in hand paid, and of the covenant hereinafter made on the part of Elisha Bloomer aforesaid, and expressly upon condition of a faithful performance thereof by him, the said Elisha Bloomer, doth hereby grant and give in writing under seal to him, his executors, administrators, and assigns, his full consent, permission, and license to construct and use, and vend to others to construct and use, during the two extensions herein set forth, to wit:

Title of Pennsylvania.

All that part of the State of Pennsylvania lying west of the Alleghany mountains, excepting Alleghany county, for the first extension, which expires on the 27th day of December, 1849, subject, nevertheless, to an agreement made by the said James G. Wilson with John Gibson, of Albany, which excepts fifty miles of said State of Pennsylvania, as the State line runs from the State of New York, for both extensions of said patent, exclusive of the sole right to run one machine at the village of Erie, in the county of Erie, which includes the sole right for the county of Erie for said machine.

And that part of the State of Maryland, embracing Washington and Alleghany counties; all that part of the State of Virginia lying upon the west side of the Blue Ridge, excepting Wheeling, and so much of the county around it as could be embraced within ten miles each way, and also excepting herefrom the counties of Hampshire, Frederick, and Shenandoah.

All the State of Kentucky, except that part lying within five miles of the Ohio river, and opposite Hamilton county, in the State of Ohio, which is excepted for both extensions of the patent, and also excepting Louisville and ten miles around it for the first extension of said patent, and the county of Lexington for both extensions thereof.

All the State of Missouri except St. Louis, and ten miles around it, for both extensions of said patent. All the State of Indiana, except New Albany and ten miles around it, for the first extension of said patent, and also excepting Madison and the county in which it is situated, and Lawrenceburg and the county in which it is situated, for both extensions of said patent; and all the State of Ohio, except Cleaveland and Cuyahoga counties, and Dayton and the county in which it is situated, for the first extension of said patent, and the county of Hamilton for both extensions thereof.

And the said James G. Wilson agrees with the said Elisha Bloomer, and his assigns, that he or they shall have the exclusive right of said patent within the territory thereby assigned, subject nevertheless to the payments, conditions, covenants, herein contained; and the said Elisha Bloomer, and his executors, administrators, and assigns, covenant with the said James G. Wilson, that he or they will not directly or indirectly, personally, or by agent, establish or maintain any depot for the sale of lumber dressed by said machines, nor dress for others lumber to be carried out of the territory, thereby assigned to be sold as an article of merchandise so as to interfere with licenses, or grantees of rights under said patents where grants have already been made.

And the said Elisha Bloomer has this day executed and delivered to the said James G. Wilson, his three promissory notes of even date herewith, made to the order of the said Wilson, for the sum of twenty-five thousand dollars in the whole; one note of eight thousand dollars, payable in one year from date, with interest of six per cent.; one other note for nine thousand dollars, two years from date, with interest at six per cent., interest payable annually; the third note for eight thousand dollars, payable three years from date, with interest at six per cent., interest payable annually; all of said notes forming the consideration of this conveyance aforesaid.

Now it is expressly understood and agreed by the parties hereto that the condition of the above conveyance is such, that if the aforesaid note or notes shall not be paid at maturity, then this conveyance shall be void and of no effect, and the said rights and interest herein conveyed, and every part thereof, shall revert back and belong to the said James G. Wilson, the same as if this agreement had not been executed; and all payments previously made by said Bloomer or other persons upon this contract, shall, upon any such breach of payment of the aforesaid note or notes, or interest when due, belong to and be retained by said James G. Wilson, as for liquidated damages for said breach of said contract; and the said Wilson upon such forfeiture shall resell the aforesaid rights to any person he may think proper for his own benefit forever.

In testimony wherof the parties have interchangeably set their hands and seals.

JAMES G. WILSON, [SEAL]
ELISHA BLOOMER. [SEAL.]

In presence of—
GEO. B. SLOAT.

Which said agreement or instrument in writing was, on or about the first day of July, one thousand eight hundred and forty-seven, duly recorded in the United States Patent office, in the city of Washington aforesaid, in liber K 1, page 24 of transfers of patent rights, as will more fully appear by a copy of the record thereof, duly authenticated, and ready to be produced in court as your honors may require; and the same and your orator's rights and interests thereunder, and still remains in full force and effect, and in no way invalidated or impaired.

And your complainant avers, that he has paid the said sums of money specified in said contract, and hath fully, faithfully, observed, kept, and performed the terms, conditions, and provisions of said contract between him and the said Wilson, on his part to be observed, kept, and performed; and he hath full, complete, and indefeasible title to said patent right within the territory described in the foregoing contract; he further represents that the said patented machine hath, since the issuing of said patent, and the renewals thereof, been long and generally used in the several States of this Union, and within the county of Alleghany, in this district, and the patentee, and the assignees of said patent, have diligently prosecuted invaders of said patent, and obtained numerous injunctions and recoveries against them in courts of competent jurisdiction, in divers States of this Union, by which courts, as well as by the Supreme Court of the United States, the validity of said patent and the aforesaid renewals thereof hath by divers decisions been fully sustained.

And your orator further shows unto your honors, that the defendants, well knowing the facts aforesaid, and in violation of your orator's rights under said patent, have since the 27th day of December, 1849, to wit, on or about the first day of January, 1850, at Pittsburgh, in the county of Alleghany, in the western district of Pennsylvania, and within the territory embraced in the said grant to your orator, set up and put in operation, and have since, from time to time, and on divers days, used, and kept in operation, and have now in operation, and are still using, one planing, tongueing, and grooving machine, made in all its material parts substantially like, and upon the principle, plan, and description of the said renewed patent and amended specification.

And further that the defendants, at Pittsburgh aforesaid, and on or about the day last above mentioned, did construct, set up, and put in operation, and have since that time, on divers days, used and kept in operation, and still continue to use and keep in operation, one other planing, tongueing, and grooving machine, made in all its material parts substantially like, and upon the principle, plan, and description of the renewed patent and amended specification.

And further that the defendants have, from time to time, during such period, sold, and are still selling, the manufactured product of said machines, and through such acts great profits have accrued to the defendants, and great injury to your orator, the amount and particulars of such profits your orator is unable to set forth, but believes they amount to the sum of one thousand dollars; and prays that the defendants may a full disclosure make in relation thereto, and account for the same to your orator.

Complainant further represents, that on the 29th of July, 1830, William Woodworth and James Strong transferred said patent right for Woodworth's planing machine for the State of Pennsylvania, (except the city and county of Philadelphia,) to Isaac Collins and Barzillai Smith, by instruments under their hands and seals, a certified copy whereof from the record office is now in the hands of your orator, and ready to be produced and to be made part of this bill.

And afterwards, on the 19th day of May, 1832, Collins and Smith transferred to one James S. Barnet the right, license, or privilege for fifty machines in the county of Alleghany, by instrument, a copy whereof is hereto affixed, and made part of this bill; and on or about the 3d of November, 1833, one George Warner and the defendant, John McQuewan, procured from the said James S. Barnet an assignment as of the license, permission, or right to use said machine, a copy whereof is also filed herewith and made part of this bill.

And on the twenty-fifth day of September, 1833, the said defendants caused and procured said last mentioned assignment to be recorded in the Patent office.

The original of said assignment by Collins and Smith, and by said Barnet, if in possession of said defendants, the complainants pray that they may be required to produce the same and file a copy thereof with their answer; and that the benefit of said assignment did not inure to the defendants beyond the term of the original patent, and it conferred no license or right to use said machine during the term of the second renewal, but the exclusive right to use and vend said patented machines during the period specified in the second renewal was vested by law solely in the patentee and the assignees of said second renewal.

That the original patent to Woodworth expired 27th December, 1842; the first extension continued until 27th December, 1849; the second extension embraced the period between 27th December, 1849, and the 27th December, 1856, being a renewed term of seven years.

During the first extension the defendants, Samuel Douglass and John McQuewan, the father and copartner of Allen McQuewan, being in possession of the same machine, now used by the present defendants, they were prosecuted in the court by bill in equity No. 9,
term, 1846, on complaint of James Lippincott and James Millinger, who were assignees of said patent within the county of Alleghany, during the first extension for invasion of said patent, which suit is still pending in this court, and the said defendants, John McQuewan and Douglass, there claimed to be in the use and enjoyment of said machine, as the assignees and grantees under Woodworth's patent of the same.

But the first extension of said patent having expired on the 27th of December, 1849, the said defendant having unlawfully continued to use the same machine, pretending to deny the validity of said original patent, and the renewals and extensions thereof, your complainant further represents, that the said patented machine having proved very profitable to those engaged in its use and employment, especially in large cities, and populous districts, numerous active and powerful combinations have been formed to resist and evade the said renewed patent, and to destroy the rights of the patentees and their assigns, to which end large sums of money have been raised and contributed by said persons, in using and possessing said machines to resist said patent, by means whereof the patentees and their assignees and your complainant as one of said assignees, have been involved in expensive and ruinous litigation to enforce their rights under said patent against the invaders thereof; and that the defendants in this bill have combined, confederated, and agreed with divers other persons unknown to your complainant, who are possessing and unlawfully using the invention of said Woodworth, in the county of Alleghany, to resist the said renewed patent and the claims of your complainant under the same as herein set forth, and to that end they have jointly employed or agreed to employ counsel, procure testimony, and carry on litigation with your complainant in respect to the use of said machine, in order to resist and evade said renewed patent; and your complainant has by reason of such resistance and confederacy been hindered and prevented from selling and disposing of, to other persons, upon fair and reasonable terms, the right under said renewed patent, and his assignment thereof to use said patented machine, although he has been ready and willing, and has offered to the defendants and others, to sell and dispose of said right to them upon fair and reasonable terms.

Whereas complainant has been able to sell, and has sold, said right at other places, where such combinations do not exist, to wit, in the territory following:

In Louisville, Paducah, and Frankfort, in the State of Kentucky; New Albany and Indianapolis, in the State of Indiana; Zenia, Springfield, Dayton, Columbus, Wood, and Lucas counties, and Cuyahoga county, Ohio; Wheeling, Virginia; Brownsville and Monongahela city, in Pennsylvania, and elsewhere.

But the said defendants wholly refuse to pay to your complainant for the right to use their said machine, and persist in evading and infringing the rights of your complainant under said renewed patent, and the aforesaid assignment under which he claims.

And now to the end that the defendant may be compelled to account for and pay over to your orator the profits and income wrongfully derived as aforesaid, and be restrained from any further violation of your orator's said rights, your orator prays that your honors will grant a writ of injunction restraining the defendants from any further construction, sale, assignment, or use in any manner, of said machines or either of them, or of any other such machine, upon the principle and plan of Woodworth's said patent, and from using or vending any of the products thereof in violation of the rights of your orator as aforesaid, and that your orator may be further relieved in the premises according to equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said defendants, commanding the said John McQuewan, Allen B. McQuewan, and Samuel Douglass, the said defendants, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, and full, true, and perfect answer make to all and singular the matters herein before set forth, as fully and particularly as if the same were herein repeated, and they particularly interrogated thereto, and especially to answer the interrogatories hereto annexed.

And further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

A.

Whereas William Woodworth hath obtained letters patent, issued under the great seal of the United States, bearing date the 27th day of December, 1828, giving and granting to him, the said Woodworth, his heirs, administrators, and assigns, for and during the term of fourteen years from the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, a certain improved method for planing, tongueing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness, and also for facing and dressing brick, and cutting mouldings in or facing metallic, mineral, or other substances.

And whereas Uri Emmons hath also obtained letters patent from the United States, bearing date the 25th of April, 1829, for an alleged new and improved machine for planing, &c., called the Cylindrical Planing Machine, similar to and believed to be the same as that above described, for which Woodworth's patent was obtained, of all which, under both the letters patent aforesaid, Isaac Collins and Barzillai C. Smith, are assignees for a valuable consideration, and tenants in common, share and share alike, within and throughout the following States, district, and counties, to wit: the District of Columbia, the States of Delaware, Illinois, Indiana, Kentucky, and that part of Maryland which lies west of the Blue Ridge, New Jersey, (except the counties of Bergen, Essex, Middlesex, and Monmouth,) North Carolina, Ohio, Pennsylvania, (except the city and county of Philadelphia,) and Virginia, and the territory of Michigan.

And whereas James S. Barnet, of Pittsburgh, Pennsylvania, hath fully viewed, examined, and considered for himself the said improvements, and of his own motion hath requested and desired the said Isaac and Barzillai to give him a license and permission in writing for constructing and using machines on the said improved plan in Pittsburgh and Alleghany county, (Pennsylvania,) and in no other city, town, or place in the United States, or the territories thereof, on the conditions hereinafter mentioned, and hath offered to pay them the sum of four thousand dollars for such their license and consent, in writing, with which request or desire the said Isaac and Barzillai have agreed to comply.

Now, know all men by these presents, that the said Isaac Collins and Barzillai C. Smith, in consideration of the said sum of four thousand dollars, to them in hand paid by the said James S. Barnet, do hereby give their full consent and permission in writing, and exclusive license to the said James S. Barnet, his executors, administrators, and assigns, to construct and use during the residue of the aforesaid term of fourteen years, fifty planing machines, on the improved plan aforesaid, within Pittsburgh and Alleghany county, (Pennsylvania,) and in no other city, town, or place within the United States or the territories thereof; and also within said bounds to dispose of the plank or other things dressed and prepared in the said machines; and they do also hereby authorize and empower the said James S. Barnet, his executors, administrators, and assigns, to commence and prosecute to final judgment all suit or suits against any person or persons who shall construct or use the said improvements, within the said limits, contrary to the true meaning and intent of the aforesaid letters patent, or either of them, and the laws in such case made and provided, and to receive for his own benefit, and at his proper costs and charges any penalty or penalties which he may recover.

And in consideration of the premises, it is thereby covenanted and agreed, by and between the said Isaac and Barzillai, each for himself, and not one for the act of the other, their and each of their executors, administrators, and assigns, of the one part, and the said James S. Barnet, his executors, administrators, and assigns, of the other part, as follows, viz:

1st. That the said Isaac and Barzillai, their and each of their executors and administrators, during the terms aforesaid, shall not, nor will themselves, construct or use, nor give their license, consent, and permission to any other person than the said James S. Barnet to construct or use, the improved planing machine aforesaid within the said limits of Pittsburgh and Alleghany county.

2d. That the said James S. Barnet, his executors, administrators, and assigns, shall not, nor will during the terms aforesaid, construct or use more than fifty machines as aforesaid within the limits above mentioned, nor construct or use any such machines, nor sell and dispose of any plank or other thing dressed and prepared in such machine any where else within the United States and the Territories thereof; it being declared to be the true intent and meaning of these presents that not more than fifty planing machines in the whole shall be constructed and used by virtue of the license, consent, and permission herein given.

In witness whereof, as well the said Isaac and Barzillai as the said James S. Barnet, have hereunto set their hands and seals, this nineteenth day of May, in the year of our Lord one thousand eight hundred and thirty-one.

(Signed) ISAAC COLLINS, [SEAL.]
B. C. SMITH, [SEAL.]
JAMES S. BARNET. [SEAL.]

Sealed and delivered in the presence of—
JOSEPH BARNET.

Received and recorded, liber N, page 169 of transfers of patent rights, September 25, 1843.

In testimony whereof I have caused the seal of the Patent office to be hereunto affixed.

[SEAL.]

H. L. ELLSWORTH,
Commissioner of Patents.

Ex'd. J. J. K.

For value received, Pittsburgh, September 24, 1833, I, James S. Barnet, do sell and assign, and set over, to Mrs. Sarah P. Collins, or her attorney, six patent rights for Woodworth's patent planing machine for Alleghany county, Pennsylvania; and I authorize her, or them, to give titles for the same, and to copy the within patent.

Witness my hand this 24th September, 1833.

J. S. BARNET.

CITY OF PITTSBURG.

Before me, an alderman, in and for the city of Pittsburgh, appeared James S. Barnet, who, upon his solemn oath, saith, that the above transfer and signature is a counterfeit, and never given by him, and that he only signed her one patent right, *to her;* and further, that this instrument was in the possession of Sarah V. Collins. When the instrument was counterfeited, as he believes, by said Sarah V. Collins, without his knowledge or consent; and that the assignments annexed are all he ever made, either directly or indirectly, to the best of his knowledge and belief.

(Signed) JAS. S. BARNET.

Sworn and subscribed before me this 5th day of November, 1833.

D. S. SCULLY.

Received and recorded, liber N, page 172 of transfers of patent rights, September 25, 1843.

In testimony whereof I have caused the seal of the Patent office to be hereunto affixed.

[SEAL.]

H. L. ELLSWORTH,
Commissioner of Patents.

Ex'd. J. J. K.

For value received I hereby assign over all my right, title, interest, and claim of the within patent for Woodworth's planing machine to G. Warner and John McQuewan, their heirs and assigns, except seven rights given previous to this date, one to Z. Packard, dated 6th July, 1833; one to Isaac Wickersham, dated September 11, 1833; one to Michael Kelly and son, or their assigns, dated September 16, 1833; one to Sarah V. Collins, August 20, 1833; one to John White, dated September 1, 1833.

Witness my hand and seal this 5th day of November, 1833.

(Signed) JAMES S. BARNET,
(*But no seal is affixed to his signature.*)

Witnesses present—
D. S. SCULLY,
THOS. WILKINS.

ELISHA BLOOMER,
By SHALER & STANTON,
His solicitors.

UNITED STATES OF AMERICA,
Western district of Pennsylvania.

On this sixteenth day of July, anno domini 1850, before me personally appeared Elisha Bloomer, the within named plaintiff, who being by me duly sworn, did depose and say, that he has heard the foregoing amended bill by him subscribed read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

ELISHA BLOOMER.

Sworn and subscribed before me, this 16th day of July, 1850.

READE WASHINGTON,
Commissioner of the circuit court of the United States
for the western district of Pennsylvania, to take
acknowledgments of bail or affidavits in civil cause.

The following interrogatories are annexed to the foregoing bill, and the defendants required full, true, and perfect answers to make thereto.

1st. Whether they are not in the possession and use of a machine for planing, tongueing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness; and how long they have possessed and used the same?

2d. State as nearly as they can the exact time they came into possession of said machine, when, where, and by whom was it built and constructed, and whether they acquired the right to use it by purchase from any other person, and from whom.

3d. Whether they claim the right to use said machine under any grant, license, permission, contract, agreement, or right under any patentees or assignees of any patent; and if yea, that they state when and from whom such grant, license, permission, contract, agreement, or right was acquired by them, and file a copy thereof.

4th. Whether George Warner and Jno. McQuewan did not receive from James Barnet an assignment of Woodworth's planing machine on or about the 5th day of November, 1833, as set forth in this bill; and when was the same recorded in the Patent office; and who caused and procured said assignment to be recorded; who has possession of said assignment; and that they produce it and file a copy with their answer?

5th. Whether the said machine now used by the defendants is not the same in construction and principle as when first constructed, and when they first came into possession of it; whether any and what alterations or additions have been hereunto added while in their possession; and when and by whom made?

6th. Whether they ever purchased or received, or held any license, grant, permission, or right, verbal or in writing, from any person to use Woodworth's planing machine, or any other planing machine for planing, tongueing, and grooving planks and boards; if yea, to state when and from whom they acquired the same; state the terms; and, if in writing, to produce and file a copy thereof.

7th. That they state specifically wherein the machine possessed and used by them differs in principle or construction from the specifications in said patent renewed 8th July, 1845.

8th. That if defendants claim that the planing machine possessed and used by them was not invented by the said William Woodworth, that they answer or state specifically by whom the same and the several parts and combinations thereof was invented.

9th. That if defendants claim that the planing machine possessed and used by them is not identical in principle and construction with the specifications in the said renewed patent of July 8th, 1845, set forth in said bill, that they answer and set forth whether the machines used by them is described in or covered by any patent to any other person, and to whom.

SHALER & STANTON,
Solicitors for complainant.

Whereupon the following subpœna and notice was issued:

Copy of subpœna.

UNITED STATES OF AMERICA,
Western district of Pennsylvania, ss.

The President of the United States, to John McQuawan, Allen B. McQuawan, and Samuel Douglass, partners under the firm of McQuawan and Douglass.

For certain causes offered before our circuit court of the United States, in and for the western district of Pennsylvania in the third circuit, in the bill in equity of Elisha Bloomer, we command and strictly enjoin you, John McQuawan, Allen B. McQuewan, and Samuel Douglass, that laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judges of the said court, at a session of the same court to be holden at Pittsburgh, on the fifth day of August next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And this you are in no wise to omit, under the penalty of ten thousand dollars.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at Pittsburgh, this 6th day of July, A. D. 1850, and of the independence of the United States the seventy-fifth. [L. S.]

H. SPROUL, *Clerk.*

The defendants are required to enter appearance in this suit on or before the return day of this writ, otherwise the bill may be taken pro confesso.

Circuit court of the United States, for the western district of Pennsylvania.

ELISHA BLOOMER
vs.
JOHN MCQUEWAN, Allen B. McQuewan, and Samuel Douglass.
} In equity.

GENTLEMEN: Please take notice that I intend to move this honorable court on the 10th July, 1850, before the honorable Thomas Irvin, judge for the district [court] of the United States, western district of Pennsylvania, at 10 o'clock in the forenoon of that, or as soon thereafter as counsel can be heard, at the court-house, in the city of Pittsburgh, that a writ of injunction issue out of and under the seal of this honorable court, and to be directed to you, the said John McQuewan, Allen B. McQuewan, and Samuel Douglass, your agents, attorneys, solicitors, counsellors, and servants, therein and thereby, under a heavy penalty, therein to be inserted, commanding and firmly enjoining upon you, the said John McQuewan, Allen B. McQuewan, and Samuel Douglass, and them and each of them, absolutely to desist from constructing or causing to be constructed, using or causing to be used, or vending to others to be used, a machine or machines for dressing boards and plank by planing, tongueing, and grooving, or either, or in any separate combination, constructed upon the principle and plan specified and described in the schedule annexed to the letters patent issued to William W. Woodworth, administrator of William Woodworth, on the eighth day of July, 1845, which letters patent were a renewal upon a former surrender for an imperfect specification of letters patent issued to William Woodworth, on the 27th day of December, 1828, and extended on the 27th day of December, 1842, and again extended by act of Congress on the 26th of February, 1845, and from violating and infringing upon the said patent in any manner whatsoever, until the further order of this honorable court; which said motion will be founded upon a bill of complaint, of which the annexed is a copy; which said bill of complaint has been duly sworn to by the said Elisha Bloomer, the said complainant.

Yours, &c.,
SHALER & STANTON,
Attys. for complainant.

To JOHN MCQUEWAN,
ALLEN B. MCQUEWAN, and
SAMUEL DOUGLASS.
Dated July 6th, 1850.

This day come the parties, by their counsel, and on motion to the court, and by consent of parties, it is ordered that complainant may amend his bill within ten days, and the motion for injunction shall stand over for argument until the first Monday of August, or such further day as the court shall appoint.

Same day bill delivered to plaintiff's counsel for amendment by order of the court.

1850, July 16th. Amended bill filed as heretofore copied.

1850, September 12. Answer of respondents filed. See copy of answer, page .

1851, September 16th. Motion for injunction argued by counsel, and after argument the following order was made:

This day come the parties, by their counsel, and the complainant's motion for an injunction came on to be heard, and the arguments of counsel being heard, the court find the law and equity to be with the complainant, and do sustain the said motion; and it is thereupon ordered that an injunction issue as prayed for in said bill, on the complainant's filing with the clerk his bond, in the sum of two thousand dollars, with security.

1850, September 26th. Bond filed as required by the above order. Same day injunction issued and served.

1850, October 12. On motion of Mr. Dunlop, solicitor for respondents, the following rule was granted:

Copy of rule.

In the circuit court of the United States, for the western district of Pennsylvania.

ELISHA BLOOMER
vs.
JOHN MCQUEWAN, Allen B. McQuewan, and Samuel Douglass.

No. 7 of November term, 1850.—In equity.

And now, to wit, October 12, 1850, on motion of Mr. Dunlop, solicitor for the respondents, the court grant a rule upon the complainant to show cause, on Monday morning, at 10 o'clock, why the injunction heretofore granted in this case should not be dissolved on filing of answer and further affidavits.

[SEAL.]

From the record.

H. SPROUL, *Clerk.*

Copy of answer.

In the circuit court of the United States, for the western district of Penn.

November term, 1850, No. .

ELISHA BLOOMER
vs.
JOHN MCQUEWAN, Samuel Douglass, and A. B. McQuewan.
In chancery.

The several answers of John McQuewan, Samuel Douglass, and A.

B. McQuewan to the bill of complaint, exhibited against them in said court, of Elisha Bloomer.

The said respondents reserving to themselves, now and at all times hereafter, the full benefit of exceptions to the manifold errors and defects of the complainants' bill, for answer to so much thereof as he is advised is material to be answered, saith:

They admit that on the twenty-eighth of December, eighteen hundred and twenty-eight, a patent was issued to William Woodsworth for an alleged new and useful improvement in the method of planing boards, &c., of which the copy *is* set forth in plaintiff's bill is supposed to be correct; but no drawing or specifications connected therewith, or relating to said patent or improvement, are set forth in complainant's bill; and the respondents claim that the complainant should be held to strict and proper proof of such patent. Said respondents are informed and believe, and charge, and will give evidence to prove, that said William Woodworth was not the first, true, and original inventor or discoverer of the improvement of the planing machine, for which said patent of the twenty-seventh of December, eighteen hundred and twenty-eight, was issued, that the thing patented to said Woodworth as aforesaid was described anterior to the supposed discovery thereof by said Woodworth, to wit, in the year seventeen hundred and ninety-nine, in a public work called "the repertory of arts," published in London in England, in volume ten, pages 299, 302, 303, 304, 305.

The respondents are informed, believe, and charge the fact to be, that a patent was issued by the Government of France to one Roquin long before the supposed invention or discovery of said Woodworth for an improvement and machine similar in principle and operation to that for which the patent was issued as aforesaid to said Woodworth, and that a machine and improvement, similar in principle and operation to that patented as aforesaid to said Woodworth, was in public and practical use near the city of Baltimore, in the State of Maryland, in the year one thousand eight hundred and twenty-two, and that they expect to prove by Adam Stewart and George Hill that they had in the year eighteen hundred and twenty-two a knowledge of said last mentioned machine and improvement, and that the same was used near the city of Baltimore as aforesaid. Respondents admit that they have heard and believe that William Woodworth has departed this life, and that administration on his estate has been granted to his son, William W. Woodworth; but when, by what tribunal, and in what manner they have no knowledge, and pray that complainant may be held to legal proof of his allegations in that behalf.

These respondents are informed and believe that on the application of the said William W. Woodworth, as administrator of said William Woodworth, deceased, said letters patent to said William Woodworth were on or about the sixteenth day of November, eighteen hundred and forty-two, extended for the term of seven years from and after the twenty-seventh day of November, eighteen hundred and forty-two, but whether the same was done under and according to the laws of the United States they know not.

The respondents say that they know nothing except from the allegations in complainant's bill, in relation to the alleged assignment by said Woodworth, administrator, to James G. Wilson, of the eleventh of January, 1844, and pray that complainant may be held to proper proof of the same.

These respondents admit that an act of Congress was passed and approved on the 26th of February, 1845, for the extension of said patent after the twenty-seventh day of December, eighteen hundred and twenty-eight, for the further period of seven years from the twenty-seventh of December, A. D. 1849, and a certificate thereof by the Commissioner of Patents was affixed to the letters patent, which act of Congress and certificates are believed to be set forth correctly in complainant's bill.

The respondents admit and allege that, on or about the 8th of July, 1845, said William W. Woodworth, as administrator of said William Woodworth, deceased, did make a formal surrender of said letters patent, so granted to said Woodworth on the twenty-seventh day of December, 1828, for the term of fourteen years, and extended as aforesaid for the term of seven years from the 27th of December, 1842; and further extended as aforesaid, by act of Congress, for seven years from the twenty-seventh day of December, 1849; and that said letters patent were cancelled, and thereby became null, invalid, and wholly inoperative.

The respondents admit that a patent was issued, bearing date July 8th, 1845, which is believed to be correctly copied in complainant's bill, with the exception that it is stated to be for fourteen years from the 27th of December, A. D. 1828, instead of twenty-eight years from the 27th of December, A. D. 1828, and is described as countersigned and sealed with the seal of the Patent office, "Henry H. Sylvester, acting commissioner of patents," when in truth the original was signed "Henry H. Sylvester, acting commissioner of patents;" and the respondents suppose that the amended specification annexed to said patent is correctly copied in complainant's bill, but not knowing with certainty the fact, they refer to the certified copy that may be produced; but they charge that said patent of the 8th of July, 1845, was not within the contemplation of Congress, or warranted by said act of the 26th of February, A. D. 1845.

That said defendants deny that said renewed patent, or reissued patent, of the 8th of July, 1845, was made or granted in due form of, or by or under authority of, law. They are informed, allege, and charge, that said last mentioned patent never had any legal validity and force, virtue, or obligation; that the same vested no right or title whatever in William W. Woodworth, administrator as aforesaid, for the seven years' extension claimed under said act of the 26th of February, A. D. 1845; and that no right, title, privilege, or authority under, by virtue of, or in pursuance of, said last mentioned patent, has been or is vested in said complainant for said seven years' extension under the said act of 26th of February, A. D. 1845.

And said respondents are informed, and insist and charge, that said last mentioned patent was not for the said invention for which said patent of the 27th of December, A. D. 1828, was granted to said William Woodworth, now deceased. They are informed, allege, and charge, that no authority was by law vested in the Commissioner of Patents, or any other officer or officers, on the 8th of July, A. D. 1845, or at any other time, to grant or issue said patent of the 8th of July, 1845, for more than twenty-one years from the 27th of December, A. D. 1828, (the date of the patent to William Woodworth.)

Said respondents further allege and charge, that Edmund Burke was Commissioner of Patents on and during said 8th of July, A. D. 1845, and for many months before and after was duly, fully, and legally qualified to act as such; that said Burke, commissioner as aforesaid, did not issue, or cause, or permit said patent of the 8th of July, A. D. 1845, to be issued; that said office of Commissioner of Patents was not vacant on said 8th day of July, A. D. 1845, said Burke so being Commissioner as aforesaid during said day, and for a long period before and after; that the same was not countersigned by the Commissioner of Patents as required by the fifth section of the act of Congress, approved July 4th, 1836; that said Henry H. Sylvester, who professed to countersign said patent as "Acting Commissioner of Patents," had no legal right or authority, by appointment from the President of the United States, or otherwise, to act in the premises—the said Burke being Commissioner as aforesaid, and the said office of Commissioner not being vacant at the time said patent was extended and issued; and said respondents claim that, by reason of the premises before recited and alleged, said patent was wholly inoperative and invalid.

Respondents allege, that they are informed and believe that the issue of said amended specification and patent of the 8th of July, A. D. 1845, was improperly and fraudulently procured, and that said patent is on that account invalid; that the application for the issue of said amended patent was pending for a long time in the Patent office, and was not brought to the notice or attention of Edmund Burke, esq., the Commissioner of the Patent office; that said patent was issued without his knowledge or consent, and that no application was made to him at any time for that purpose; that he was averse to the issuing of said amended patent, and would have refused to issue the same had application been made to him for that purpose; among others, on the ground that it was not for the same invention as that for which said patent of the 27th of December, 1828, issued, and that advantage was taken of his temporary absence from the department to procure the issuing of the same by said Sylvester as aforesaid; that the amended specification for said renewed patent was on file in said Patent office long before the 8th of July, A. D. 1845, and that while the same was on file it was extensively altered and changed by one of the examining clerks in said office, and that said altered and changed specification is now on file in said office as the original amended specification supposed to be correctly set forth in complainant's bill.

The respondents also are informed, believe, and charge, that said re-issued patent of the 8th of July, A. D. 1845, was and is void, because that no duplicate of the model or drawings, or any model or drawings of the thing patented to William Woodworth as aforesaid, as originally invented, verified by oath, was deposited in the Patent office before or at the time said re-issued patent was granted, as required by the fifth section of the act of the third of March, A. D. 1837, and that such deposite was not dispensed with by the Commissioner of Patents.

For the truth and contents of the alleged assignments by William W. Woodworth, administrator, dated 14th of March, 1845, and 9th of July, 1845, to James G. Wilson, and also the assignment of 24th June, 1847, between said Wilson and complainant Bloomer, mentioned in complainant's bill, the respondents refer to the copies that may be produced by complainant from the Patent office of the United States, the respondents having no knowledge or information respecting the same, except the allegations in complainant's bill.

The respondents do not admit that the complainant paid at maturity the notes mentioned in said alleged agreement between said Wilson and him, and they pray that said complainant may be held to legal proof of his compliance with the stipulations contained in said agreement.

Your respondents admit that machines for planing, tongueing, and grooving plank at one operation, since the issuing of the original patent, and up to this time, have been used in the several States, but they deny that any working practical machine was ever erected and used according to the original specification of said patent, and they are informed and believe that no such machines were ever in practical useful use.

Your respondents are ignorant of the patentee and his assignees having dilligently prosecuted the invaders of said patent. They had heard of injunctions and recoveries being had to prevent, and compensate for, infringements of said patent, and they have heard of the patentee and his assignees being defeated in suits and actions, and they have no available information on the subject, and are ignorant of the fact and circumstances under which such suits may have failed or prevailed, except as hereafter set forth.

Your respondents deny that they have constructed and used, or that they have had constructed or used, any machine made as they understand it, upon the principle and mode of operation of the machine as described in said patent, as the invention of said William Woodworth.

They admit that they have caused to be constructed, and have used a machine for planing, tongueing, and grooving plank at one operation, within the time and at the place stated in complainant's bill, but that the machine so constructed and used by respondents differs materially and substantially from the alleged invention described in said patent, among other things, in—

1. In dispensing entirely with a carriage to carry the plank through the machine.

2. In the construction of the planing wheel, not using knives screwed upon circular heads, or upon lags passing between circular heads, but by using a planing wheel, composed of three flanches or wings from a spindle, on the end of which flanches are screwed the cutting planes.

3. In the construction of the rests upon which the journals of the feeding rollers rest, so as to permit the journals to rise and fall in slats to accommodate the rollers to the varying thicknesses of the plank, and by the use of moveable levers pressing upon the journals of the rollers, by heavy weights, with great force, without which the plank cannot be forced through the machine and against the cutters.

That this objection of the want of substantial identity of said invention of the said Woodworth, and the machine admitted as aforesaid to have been used by and constructed for respondents, was successfully established in an action on the law side of this court, No. 19, of November term, 1843, at the suit of Lippencott, claiming as assignee as aforesaid, against James Kelly and Archibald Kelly, and in which the question of such identity was at issue, and in which a verdict and judgment was rendered for defendants, the said defendants being charged by plaintiff in said suit with using a machine similar in all respects to the one used as aforesaid by respondents.

Your respondents admit the several assignments of and claim by them of the right to make, use, and vend or sell the machine of William W. Woodworth, as set forth in said bill of complaint, and the action instituted by Lippincott and Millenger, as stated therein, and that said suit is still pending.

Your respondents deny all knowledge of any unlawful combination to defeat the claims of the assignees of the Woodworth patent; the respondents have not combined, confederated, and agreed with any persons unlawfully using the invention of William Woodworth, nor with any person whatsoever for such purpose, and have entered into no agreement, written or unwritten, with any persons, whereby any persons are jointly bound to contribute any particular sums of money to employ counsel and procure testimony against, or to carry on such litigation with, complainant, in order to resist or evade the renewal of said patent.

The respondents know nothing of the sale of the patent right by complainant to different places, as set forth in said bill, and pray that the same may be established by proof, if of any importance.

WESTERN DISTRICT, PENNSYLVANIA.

Appeared before me, commissioner to take testimony of the circuit court of the United States for the western district of

Pennsylvania, the within named John McQuewan, Samuel Douglass, and A. B. McQuewan, and on their several and respective oaths, duly administered, did depose and say, that the facts set forth in the foregoing answer, which they of their own knowledge know, are true, and those facts which are stated as of the knowledge of other persons they believe to be true.

JOHN McQUEWAN,
SAM'L DOUGLASS,
A. B. McQUEWAN.

Sworn and subscribed before me, this 12th day of September, 1850.
H. SPROUL, *Clerk*.

Copy of supplemental answer.

Circuit court of the United States, western district of Pennsylvania.

ELISHA BLOOMER
vs.
JOHN McQUEWAN, Samuel Douglass, and A. B. McQuewan.
} No. 7, of Nov. term, 1850.

Supplemental answer of defendants.

The defendants further answer and say, that the purchase made by Warner and McQuewan of Barnett, as set forth in the bill, was not a purchase of a machine ready fabricated, but of a patent right to make such machine.

That the said Warner and McQuewan caused a planing machine to be built after the said purchase from Barnett, as set forth in the bill, which is the very machine which they had in use at the time of the filing of the bill, and which is stated in their answer to be used by them.

That said machine was built after the said purchase was made of Barnett by Warner and McQuewan, in the year eighteen hundred and thirty-three, or beginning of eighteen hundred and thirty-four, as defendants believe.

And said John McQuewan, for himself, states and charges, that he, at *that* time of the purchase from Barnett aforesaid, did not understand, and was not acquainted with, the specifications and claims of the Woodworth and Emmons patent; and only came to an understanding of objections to the Woodworth patent, and its insufficiency, when preparation was making for defence to the action brought by Lippincott against A. & J. D. Kelly, as set forth in the answer of defendants; but supposed, without examination, that Woodworth had a legal valid patent, a similar action having been at the same time brought against Warner and McQuewan.

That defendants are informed and believe, that a machine had been built in Pittsburg, at the instance of Barnett, or his assignee, Packard, before the said purchase made by Warner & McQuewan, which professed, as defendants understand, to have been built upon the plan of the Woodworth patent; and defendants are informed and believe that said machine was an useless and insufficient machine, and was abandoned as worthless by its projectors.

The defendants further state, that the machine used by them at and before the filing of this bill of complainant, was constructed substantially, and in all material particulars, upon the very plan, construction, and principle, as the machine which was used by A. Kelly and J. D. Kelly when the action was instituted against them as aforesaid by Lippincott, in 1842, and was in said action declared against as an infringement of the patent of Woodworth, and in which the said verdict was rendered for the defendants.

The defendants further charge, that an action was instituted against Griswold E. Warner, on the law side of this court, No. 11, November term, 1844, for damage for infringement, in which the plaintiff was forced to withdraw a juror and continue the cause.

That an action was also instituted by the said Lippincott against your respondents, John McQuewan and Samuel Douglass, on the law side of this court, No. 12, November term, 1844, for infringement of the Woodworth patent by them; and at the time, and before said action, the defendants in said action were using the identical machine which has been in this bill enjoined by this court. That Lippincott, in said action for damages, after his defeat by the Kellys, as stated, has proceeded no further towards a trial.

Appeared before me John McQuewan and A. B. McQuewan, and on their oaths did depose and say, upon their several and respective oaths, that the facts set forth in the foregoing supplemental answer, which they know of their own knowledge, are true, and that those which they have stated upon the information of others they believe to be true.

JOHN McQUEWAN,
A. B. McQUEWAN.

Sworn and subscribed, this 12th day of October, A. D. 1850.

H. SPROUL, *Clerk.*

ELISHA BLOOMER
vs.
McQUEWAN & DOUGLASS.

No. term, 1850, in chancery.

And now comes the said complainant and says, that the matters in his bill set forth are true in substance and fact, and that the matters in the defendants answer, set forth contrary thereto, are untrue; and this he is ready to verify, when and where the court may direct.

SHALER & STANTON,
For complainant.

1850, October 14th. The rule of the 12th inst., to show cause why the injunction in this case should not be dissolved on filing of answer, and for the affiants. Continued until 25th, 1850.

And now, to wit, November 25th, 1850, the rule of the 12th ultimo, to show cause why the injunction in this case should not be dissolved, came on for hearing, and was argued by counsel; and, after argument, the court held the case over for consideration, and afterwards filed the following opinion:

Copy of opinion of the court.

In the circuit court of Pennsylvania, for western district.

ELISHA BLOOMER
vs.
McQUEWAN & DOUGLASS.

On motion by complainant for interlocutory injunction in this and other case, and by defendants for issues to be tried by a jury—

Opinion of the court.

There is no material difference in the several cases which have been argued together on the present motions.

The complainant, Bloomer, claims, as assignee of the patent granted to William Woodworth, in December, 1828, under the extension of the same to his administrator by the act of Congress of 26th of February, 1845. It is alleged in the bill, and admitted in the answers, that the machines used by defendants, the use of which is now sought to be enjoined, were made under licenses duly derived from the patentee, or his assignees, previous to December, 1849; but it is contended that the purchasers of these machines under the original patent have no right to use them during the extension of the term of the patent, since December, 1849.

The defendants have filed their answers, denying the right of the complainant, and averring that W. Woodworth was not the original inventor of the machine patented to him in 1828; and also that the patent of 1828, which was extended by the act of 1845, has been surrendered and cancelled, and that the renewed patent taken out by the administrator of Woodworth is not for the same invention. In support of these allegations they have produced the deposition of a witness, who swears that he invented and put into operation the same machine, previous to the patent and invention of Woodworth, and have shown the record of a suit lately tried in the circuit court of the United States, for Maryland, before the chief justice, in which the jury found "that the patent issued to the said William Woodworth's administrator on the 8th day of July, 1845, is not for the same invention as the patent above mentioned, issued to W. Woodworth in 1828."

As a general rule, when the whole equity of the bill and the title of the complainant is denied unequivocally in the answer, an interlocutory injunction will not be granted, or affidavits heard to contradict the answer, unless in cases of waste, or where some irreparable damage might be inflicted before the final hearing.

I have said on a former occasion, and still think, that it is time that the question as to the originality of this patent to Woodworth should be considered as settled. After twenty-one years of possession, and successful litigation in almost every State in the Union, it is exceedingly vexatious, both to the patentee and the court, to be compelled to repeat a process which costs so much time, labor, and expense. Experience has shown that few, if any, patents have ever issued in the United States for an invention, which witnesses of a foreign or domestic origin cannot be found to impeach; but it has also shown that, however the discovery of such witnesses may fortify a defendant in swearing to the fact in his answer, and denying the title of the patentee, they are usually found to be but broken reeds by those who lean upon them in a contest before a jury, where their testimony is fully sifted and weighed.

If the present application for an injunction were resisted on this ground alone, under the special circumstances attending this patent, I should feel much disposed to grant it, notwithstanding the denial of the answer and the affidavit supporting it.

2d. But besides a doubtful question of law, which I shall presently notice, there is another question of fact affecting the title of complainant in these cases, which has arisen lately, and peculiarly affects the validity of this patent as extended by the act of 1845. That act extended the patent granted to Woodworth in 1828, seven years from December, 1849. This patent, thus extended, was afterwards surrendered by the administrator of Woodworth, and a new patent taken out. The defendants swear, in their answer, that this renewed patent on which the bill is founded is not for the same invention which was contained in the original of 1828, and contend that complainant cannot claim under a surrendered and cancelled patent, nor upon the new one, unless it be for the same invention, which, after a full and fair trial, it has lately been decided not to be. In answer to this objection it is stated that the Supreme Court have decided this question in the case of Wilson vs. Rosseau, (4th Howard, 688.) But this appears to be a mistake; the court in that case decided only that the renewed patent was not void for uncertainty, ambiguity, or multiplicity of claim as a question of law on the face of the patent. Whether it was for the same invention is a question of fact which could not be, and was not, submitted to them by the certificate of division of opinion from the circuit court.

3d. There is a question of law also, with regard to the complainant's right to these injunctions, the decision of which I am not prepared to anticipate before the final hearing of the case. Notwithstanding the authority produced, my mind is not yet clear from doubt as to the construction of this act of Congress of 1845, extending the patent of Woodworth. If an inventor, in the enjoyment of his monopoly, sells to me his machine, it is mine absolutely in full property, with a right to use and enjoy it to all future time; at least such is the supposition and belief of every person who buys an article from its owner, whether it be patented or not. I can well believe that Congress might extend the term of this patent to a meritorious inventor, that he may continue to have the profits of the monopoly of making and vending the patented articles without intending to destroy those he has already sold. The former may be a just and proper exercise of the power of Congress, the latter a tyrannical abuse of it, such as should never be imputed to the legislature unless expressed in positive and express language; and so far as this question has been passed upon by the Supreme Court, such appears to be their opinion also. In the case of Rosseau vs. Wilson, already cited, Mr. Justice Nelson, who delivered the opinion of the court, in speaking of the 18th section of the act of 1836, which authorized the extension of the patent for seven years, says: "By the report of the Commissioner of Patents it appears that 500 patents [were] issued in the year 1844. For the last 14 years the average issue, yearly, exceeded this number, and embrace articles to be found in use in every department of labor or art, on the farm, in the workshop, and factory. These articles have been purchased from the patentee, and gone into common use. But if the construction against which we contend should prevail, the moment the patent of either article is renewed, the common use is arrested by the exclusive grant to the patentee; a construction leading to such consequences, and fraught with such unmixed evil, we must be satisfied was never contemplated by Congress, and should not be adopted unless compelled by the most express and positive language of the statute."

That Congress, in the present case, intended to confer on the patentee any greater favor than was conferred by the first extension, under the act of 1836, does not directly appear. If the construction contended for by complainant be correct, he can call upon this court to send the marshal and break the machines to pieces, which have been purchased from the patentee or his assignees. To enjoin the use of them amounts to much the same thing. There is certainly no "express and positive language in the statute" conferring a right of such doubtful justice on the patentee.

In such a case I am not disposed, on a mere interlocutory motion, and before the parties have had a full and final hearing, to exercise the high and dangerous power (if exercised indiscreetly) of issuing an injunction, which will put the defendants and their business entirely at the mercy of plaintiffs, without the chance of a fair and full trial.

They do not stand before the court in the attitude of pirates of complainant's invention, but rather as resisting what they believe to be an oppressive construction of an act of Congress, and one never contemplated by it. They are amply able to pay any damages which may be assessed, in case of a recovery against them; and the complainant may have an order on them to keep an account; but the injunctions are refused.

[Rec. cciii, D. T. 1851.]—5

As to ordering the issues requested by the defendants, we would remark, that the fact that these machines were purchased from the patentee by the defendants works no estoppel, either in law or equity, to their denial of the originality of the invention under the circumstances of the case.

They have a right to be heard on the defence set up in their answer, and sworn to.

Whether it should be tried by the court, or an issue sent to a jury, depends on the nature of the case.

The questions of originality and identity are questions of fact, and the testimony will, as usual, be conflicting and contradictory. Such questions are best tried by a jury with the witnesses before them in person. Issues are therefore ordered to be tried at the next May term.

The record of the case of Wilson et al. vs. Brown, in the circuit court of the United States for Maryland, affords an excellent precedent for the form in which the order should be made, and which the clerk (with the assistance of the counsel) is directed to follow.

Without assenting at this time to the reasons and inferences contained in the points marked 2d and 3d in the above opinion, I concur in refusing the injunction and directing the issue.

TH. IRWIN, *D. J.*

Whereupon the following order was made by the court: It is ordered, that the defendants keep a regular, true, and accurate daily account of all the work done by and upon the planing machine now in their possession, setting forth [the] nature and amount of work done, for whom, and the price received or charged therefor; and that they file a monthly statement thereof in the office of the clerk of the court on the first Monday of each and every month until further order; and that the said complainant shall, at all reasonable times, be permitted to examine and inspect the books and daily accounts of said defendants in relation to the said planing machine and the work done thereupon.

And it was further ordered, that the following issues be tried at the next May term of this court.

Copy of issues ordered by the court to be tried by a jury as at law.

First. Whether William Woodworth was the original and first inventor of the improvement for which he obtained a patent on the twenty-seventh day of December, one thousand eight hundred and twenty-eight, excepting that part disclaimed by William W. Woodworth, his administrator, by his disclaimer filed in the Patent office on the second day of January, one thousand *day of January, one thousand* eight hundred and forty-three.

Second. Whether the patent issued to the William Woodworth, administrator as aforesaid, on the eighth day of July, one thousand eight hundred and forty-five, is for the same invention as the patent above mentioned to William Woodworth, with the exception of the part disclaimed as aforesaid.

And now, to wit, May 17, 19, 20, and 21, the following issues were tried by jury as a court of law:

1st. Was William Woodworth the original inventor of the machine patented to him in 1828, December 27th?

2d. Is the re-issued patent of July 8th, 1845, for the same invention as that intended to have been patented by the patent of December, 1828? And the jury having heard the law and the evidence on both sides do say—

First. That William Woodworth was the original inventor of the machine patented to him in 1828.

Second. That the re-issued patent of July 8th, 1845, is the same as that intended to have been patented by the patent of December 27th, 1828.

And afterwards, to wit, on the nineteenth day of November, one thousand eight hundred and fifty-one, this cause came on for final hearing upon the bill, answer, replication, exhibits, testimony, and issues found by the jury, and was argued by counsel.

And the judges of the court being divided and opposed in opinion as to the law and equity arising in the case, it is therefore ordered, adjudged, and decreed, that the bill be dismissed with costs.

Thereupon the complainant prays an appeal to the Supreme Court, and the same is allowed. Bond to be given in the sum of one thousand dollars, to be approved by the clerk, to answer all such costs as, upon affirmance of the above decree, shall be adjudged or decreed to the respondents.

1851, December 4th. Bond filed and approved by the clerk.

UNITED STATES OF AMERICA,
Western district of Pennsylvania, sct.

I, Henry Sproul, clerk of the circuit court of the United States, do hereby certify, that the foregoing is a true and correct copy of the record in this cause, with the exception of such parts as were omitted by consent of the counsel on both sides; and that the testimony hereafter inclosed are true copies of the testimony read upon the hearing and trial, except such parts *are* were by consent of both parties omitted.

In testimony whereof I hereunto set my hand and affixed the seal [SEAL.] of the said court, at Pittsburgh, this sixth day of December, A. D. 1851, and of the independence of the United States the seventy-sixth.

H. SPROUL, *Clerk.*

The testimony in this record may be found by reference to the following pages:

Deposition	of A. B. Stoughton,	on part of	defendants,	76	to	83
Do.	of Edmund Burke,	do.	do.	84	to	109
Do.	of Walker R. Johnston,	do.	do.	110	to	124
Do.	of H. H. Sylvester,	on part of	plaintiff,	125	to	129

Deposition	of W. P. N. Fitzgerald,	on part of	plaintiff,	129 to 131
Do.	of David A. Hall,	do.	do.	131 to 133
Do.	of Arthur L. McIntire,	do.	do.	133 to 135
Do.	of Loren L. Johnston,	do.	do.	137 to 151
Do.	of Jared Johnston,	do.	do.	152 to 157
Do.	of E. N. Morse,	do.	do.	158 to 164
Do.	of Wm. Hamilton,	do.	do.	170 to 171
Do.	of Peter Fay,	do.	do.	174 to 177
Do.	of Thos. Stewart,	do.	do.	178 to 186
Do.	of John Bates,	do.	do.	187 to 190
Do.	of N. Lebar,	do.	do.	190 to 195
Do.	of James E. Serrell,	do.	do.	200 to 206

[*Eagle.*]

In the circuit court of the United States, for the western district of Pennsylvania, in the third circuit.

No. 6, of November term, 1850.

ELISHA BLOOMER
vs.
JOHN MCQUEWAN, Allen B. McQuewan, and Samuel Douglass.

[L. S.] The President of the United States, to Elisha Whittlesey, or to Andrew Wylie, esqs., of Washington city, in the District of Columbia.

Know you, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain bill in equity therein depending, wherein the said Elisha Bloomer is complainant, and John McQuewan, Allen B. McQuewan, and Samuel Douglass, are respondents, to call before you, at a certain day and place, by you for that purpose appointed, all and every person or persons who may be named to you by the said respondents as witnesses in the said action, and then and there to examine them on their respective oaths or affirmations, on certain interrogations hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done you are to send the same to the said court, closed up under your seals, firmly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, esq., chief justice of the Supreme Court of the United States, at Pittsburg, this eighteenth day of November, A. D. 1850, and of the independence of the United States the seventy-fifth.

H. SPROUL, *Clerk.*

In the circuit court of the United States, for the western district of Pennsylvania.

No. , November term, 1850.

ELISHA BLOOMER
vs.
JOHN McQUEWAN, Allen B. McQuewan, and Samuel Douglass.
} In chancery.

Enter a rule for a commission to take the depositions on the part of the defendants, at Washington city, in the District of Columbia, and file the following interrogatories:

1st. What employment are you in at the Patent office, and how long have you been in such office?

2d. Who was Commissioner of Patents on the eighth day of July, one thousand eight hundred and forty-five, and immediately preceding and succeeding that day?

3d. Was there any vacancy in the office of Commissioner of Patents during any part of the month of July, one thousand eight hundred and forty-five?

4th. Was there any authority given, or commission issued to Henry H. Sylvester, chief clerk of the Patent office, by the President of the United States to act as Commissioner of Patents, or to perform any duty as Commissioner of Patents; is there, or was there ever, on file any such authority or commission in the Patent office? If yea, attach a copy thereof to your deposition, and declare that you have compared it with the original, and that it is a correct and full copy thereof.

5th. Have you made diligent search for such authority or commission in the proper place in your office?

6th. Are the drawings annexed, or belonging to the patent granted to William Woodworth on the 27th December, 1828, or any authenticated copy or copies thereof, transcribed or copied into books of record kept for that purpose in the Patent office?

7th. Was there any duplicate of the model of the thing as originally invented by William Woodworth, and patented to him as aforesaid, deposited in the Patent office on or prior to the eighth of July, one thousand eight hundred and forty-five?

8th. What employment do you hold in the office of the Secretary of State of the United States?

9th. Is there on file in said office any authority or commission, issued by the President of the United States, to Henry H. Sylvester to act as Commissioner of Patents? State if you have made the proper search therefor.

10th. If there is, attach a copy thereof to your deposition, and say if you have compared it with the original, and whether it is a true copy of such original.

11th. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

JAMES DUNLOP,
Att'y of defendants.

Depositions of witnesses, produced, sworn, and examined on the 27th day of November, 1850, at the city of Washington, in the District of Columbia, by virtue of a commission issuing from the circuit court of the United States, for the western district of Pennsylvania, to Elisha Whittlesey or Andrew Wylie, jr., directed for the examination of witnesses in a certain cause therein depending, wherein Elisha Bloomer is plaintiff, and John McQuewan, Allen B. McQuewan, and Samuel Douglass, are defendants.

The depositions annexed were taken as aforesaid, the witnesses being first sworn to make true answers to all such questions as should be asked upon the interrogatories annexed to said commission, without favor or affection to either party, and to speak the truth, the whole truth, and nothing but the truth.

O. K. Barrett, of the city and District aforesaid, aged forty years, or thereabouts, being produced, sworn, and examined on behalf of the defendants, he answers as follows:

In pursuance of a mandate addressed to Elisha Whittlesey, or to Andrew Wylie, jr., esquires, of the city of Washington, in the District of Columbia, from the circuit court of the United States, for the western district of Pennsylvania, in the third circuit, this deponent being called before me, the said Andrew Wylie, on his solemn oath deposeth as follows, viz:

To the first interrogatory: That he is not now employed, nor never has been employed, in any way in the Patent office.

To the second interrogatory he answers: That, from the records in his possession, it seems apparent that Edmund Burke, esq., was Commissioner of Patents on the 8th day of July, 1845.

To the third interrogatory this deponent answers and saith: That, so far as he can discover from a careful examination of the records of commissions which he at the present time has the honor to have in custody, there was not any vacancy in the office of Commissioner of Patents during any part of the month of July, 1845.

To the fourth and fifth interrogatories this deponent answers and saith: That he finds on the records in his department the following:

To HENRY H. SYLVESTER:

SIR: During the absence of Edmund Burke, commissioner of patents, you are hereby appointed to take charge and execute the duties of his office.

JAMES K. POLK.

Washington, August 26th, 1846.

To the sixth and seventh interrogatories this deponent answers and saith: He knows nothing.

To the eighth interrogatory he answers and saith: That he has the honor at present to discharge the duties of commission clerk, in the Department of State.

To the ninth interrogatory: This deponent has answered in the fifth, and the tenth is also thereby answered.

In answer to the eleventh and last interrogatory this deponent knows nothing; and furthermore this deponent saith not.

O. K. BARRETT.

Attest: ANDREW WYLIE, jr.

A. B. Stoughton, of the city and district aforesaid, aged thirty-five years, or thereabouts, being produced, sworn, and examined on behalf of the respondents, deposeth as follows:

To the first interrogatory: I am not now in the Patent office, having resigned on the first of November, 1850; for five years preceding that time I was employed in the Patent office; for the past two years and a half as the machinist of said office.

To the 2d I answer: Edmund Burke was the Commissioner of Patents on the 8th of July, 1845, having been appointed on the 6th day of May, 1845; he remained as commissioner of the Patent office until about May, 1849.

To the 3d I answer: There was no vacancy in the office of Commissioner of Patents during any part of the month of July, 1845.

To the 4th interrogatory I answer: There is no authority or commission on file in the Patent office, from the President of the United States, authorizing Henry H. Sylvester, the then chief clerk of the Patent office, to act as Commissioner of Patents, nor was such authority ever on file.

To the 5th interrogatory I answer: I have repeatedly made search for such authority in the Patent office, in the book where such record is kept, but have never found it.

To the 6th interrogatory I answer: The original patent, granted to William Woodworth on the 27th day of December, 1828, had no drawing attached to it; i[t] was not the practice of the office at that time to require drawings in all cases. Since that time a drawing has been furnished, copies of which are furnished by the office, and certified or authenticated as being copies of the original on file in the office; (I have this day seen the original patent of William Woodworth, granted December 27, 1828; there is no drawing attached to it.) The drawings are not transcribed or copied in books of record, but are kept in port folios.

To the 7th interrogatory I answer: A model, purporting to be a duplicate of the one furnished by William Woodworth originally, was deposited in the Patent office on the 23d of March, 1837, and has been there ever since.

To the eighth interrogatory I answer: None.

To the ninth interrogatory I answer: There is on file in the Patent office a copy of a commission from James K. Polk, President of the United States, to Henry H. Sylvester, appointing him Commissioner pro tem. during the absence of Mr. Burke; I do not know the date of it, but think it was in 1846.

To the 10th interrogatory I answer: The commission from the President of the United States to Henry H. Sylvester is in a book, which only those who are employed in the office have access to; I cannot, therefore, examine it now; I have seen it in the book repeatedly.

To the 11th interrogatory I answer: That during my connexion with the Patent office I have had occasion to examine the papers, &c., pertaining to the patent granted to William Woodworth for planing machine, on the 27th December, 1828, at least one hundred times; having repeatedly made copies of the entire papers for suits in courts; I mean the papers in the matter of the extension and reissue of said patent; I have repeatedly made inquiry from officers in the Patent office, who were there at the time the reissue was pending, and my knowledge of the history of the case is as follows: On the 18th day of January, 1844, an application was made through Thomas P. Jones, as the agent for the reissue of the patent; upon an examination of the case Mr. Henry L. Ellsworth, then Commissioner of Patents, determined not to grant the reissue; Mr. Charles M. Keller was the examiner at the time, before whom and by whom the case was examined, and Mr. Wm. P. N. Fitzgerald was his assistant; the application was allowed to slumber in the office until the 7th of July, 1845; in the mean time, to wit, on the 6th of May, 1845, Mr. Ellsworth resigned, and Mr. Edmund Burke was appointed Commissioner of Patents. On the 8th of May, 1845, Charles M. Keller resigned as examiner, and on the 27th of the same month and year Mr. Fitzgerald was promoted to the vacancy; Mr. Burke, the Commissioner of Patents, left Washington on the 23d of June, 1845, and was absent until the 25th of July, 1845; Charles M. Keller (the former examiner of the case) appeared as the agent in the matter, got Mr. Fitzgerald, his former assistant, to agree to allow such claims as he presented, and the case was taken to the acting Commissioner for his signature, who, as is the custom in such cases, seeing the examiner's name on the file admitted it to issue on the 8th July, 1845, as the original papers show; the whole thing was done during the absence of Mr. Burke, the commissioner, without his knowledge, and as I have heard him repeatedly say officially, contrary to his belief of justice in the case. The claims as allowed on the reissue are in the handwriting of Charles M. Keller, and he has been the attorney in the case ever since the re-issue.

It is a well known fact in the Patent office that Henry L. Ellsworth, the former commissioner, was deadly hostile to both the extension and reissue of the Woodworth patent above referred to, and this fact I well know myself. A. B. STOUGHTON.

Attest:

ANDREW WYLIE, Jr., *Com.*

[*Eagle.*]

In the circuit court of the United States, for the western district of Pennsylvania, in the third circuit.

No. 6, of November term, 1850.

ELISHA BLOOMER
vs.
MCQUEWAN & DOUGLASS.

The President of the United States, to Ralph Metcalf or Amasa Edes,
[L. S.] esqr., of Newport, in the State of New Hampshire.

Know ye, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain action bill in equity therein depending, wherein the said Elisha Bloomer is complainant, and John McQuewan, Samuel Douglass, and Allen B. McQuewan are defendants, to call before you at a certain day and place, by you for that purpose appointed, all and every person or persons, who may be named to you by the said respondents as witnesses in the said action, and then and there to examine them on their respective oaths or affirmations, on certain interrogations hereunto annexed, touching the premises, and to reduce their testimony to writing, and when you shall have so done, you are to send the same to the said court, closed up under your seals, firmly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States at Pittsburgh, this eighteenth day of November, A. D. 1850, and of the independence of the United States the seventy-fifth.

H. SPROUL, *Clerk.*

Circuit court United States, western district of Pennsylvania.

No. 6, of November term, 1850. In chancery.

ELISHA BLOOMER
vs.
John McQuewan, Allen B. McQuewan, and
Samuel Douglass.

Enter a rule for a commission to take depositions at Newport, New Hampshire, on the part of the respondents, and file the following interrogatories:

1. Were you Commissioner of Patents; and if so, during what time?
2. Was there any vacancy in the office of Commissioner of Patents during any part of the time you were such commissioner?
3. Was there any authority or power conferred by the President of the United States upon Henry H. Sylvester during the year one thousand eight hundred and forty-five, to act as acting Commissioner of

Patents, or to perform any of the duties of the office of Commissioner of Patents during such year?

4. Do you know under what authority said Sylvester pretended to act in countersigning the reissued patent of the 8th of July, one thousand eight hundred and forty-five, to the administrator of William Woodworth, for a planing, tongueing, and grooving machine?

5. Were you requested to issue said named patent; and if you were not, please to state why the application was made to the chief clerk.

6. Was the application for the renewal of said patent pending in said office any time before the said reissue; and if so, how long?

7. Do you know if the reissue of said patent was fraudulently procured by said administrator during your absence; and if so, state the facts upon which you found your opinion.

8. Would you have issued the renewed patent and countersigned the same had you been requested as Commissioner of Patents to do so; and if not, please to state why you would not have done so.

9. Please to state in what particular the renewed patent of the Woodworth planing machine of the eighth of July, one thousand eight hundred and forty-five, differs in your opinion from the original patent of the twenty-seventh of December, one thousand eight hundred and twenty-eight.

JAMES DUNLOP,
Attorney for defendants.

I hereby certify the foregoing to be a true copy of the interrogatories filed by defendants in this cause. H. SPROUL, *Clerk.*
November 18th, 1850.

Pursuant to a commission from the circuit court of the United States for the western district of Pennsylvania, I called before me Edmund Burke, esqr., a witness, and the only witness named to me by respondents, named in said commission, at my office in Newport, in the county of Sullivan, and State of New Hampshire, on the third day of May, A. D. 1851, who being duly examined on oath, touching the several interrogatories in the premises annexed to and accompanying the said commission, and having made the several answers hereto annexed, and subscribed each sheet of the same in my presence, and which have been subscribed also by me, made oath that the said answers to the said several interrogatories contained the truth, whole truth, and nothing but the truth.

Before me— RALPH METCALF,
Commissioner.

To circuit court of the United States, for the western district of Pennsylvania, in the third district.

ELISHA BLOOMER
vs.
John McQuewan, Allen B. McQuewan, and
Samuel Douglass.

Pursuant to a commission from said court hereto annexed I called before [me] Hon. Edmund Burke, a witness named to me by the respondents at my office in Newport, in the county of Sullivan, and State of New Hampshire, on Saturday the third day of May, 1851, and being duly examined on oath, on the several interrogatories annexed to said commission touching the premises, he made the following several answers to the same:

Answer to the first interrogatory.

I was Commissioner of Patents of the United States, and held said office from the fifth day of May, A. D. 1845, to the nineteenth day of May, A. D. 1849.

Answer to the second interrogatory.

There was not of course any vacancy in the office of Commissioner of Patents during the period which I held the office, which period is stated in my answer to the preceding interrogatory. I was absent from Washington several times during the period I was Commissioner of Patents, on which occasions the duties of commissioner were performed by Henry H. Sylvester, esqr., the chief clerk of the Patent office.

Answer to the third interrogatory.

I am quite confident that there was no authority or power conferred by the President of the United States upon Henry H. Sylvester, during the year one thousand eight hundred and forty-five, to act as acting Commissioner of Patents, or to perform the duties of the office of Commissioner of Patents during that year. I was absent thrice from Washington during that year, on each of which occasions Mr. Sylvester performed the duties of the Commissioner of Patents as acting commissioner, not, I am confident by the appointment of the President of the United States, but under the general authority conferred upon the chief clerk of the Patent office by an act of Congress, entitled "an act to promote the progress of the useful arts, and to repeat all acts and parts of acts heretofore made for that purpose; approved July 4th, 1836.

Subsequently I had some apprehension that such a course of procedure was not legal, and on one occasion, when the business of the office required my absence, I had Mr. Sylvester specially authorized by the President of the United States to perform the duties of Commissioner of Patents during my absence; soon after that occasion Judge Woodbury decided, that the act of Congress before mentioned did authorize the chief clerk of the Patent office to perform the duties of the commissioner during the absence of the latter, and a special authority to the chief clerk to act as Commissioner of Patents during the absence of that officer was never again resorted to while I was at the head of the Patent office.

Answer to the fourth interrogatory.

I do know that said Sylvester in countersigning the reissued patent of the eighth of July, one thousand eight hundred and forty-five, to the administrator of William Woodworth for a planing, tongueing, and grooving machine, acted under the general authority conferred upon him as chief clerk of the Patent office, to perform the duties of Commissioner of Patents in the absence of that officer by the act of July 4th, 1836, referred to in my answer to the third interrogatory. He had no authority, no special appointment as acting commissioner having been obtained for him from the President of the United States on that occasion.

Answer to the fifth interrogatory. I was never requested to issue the said patent above named to the administrator of Wm. Woodworth, and I know not, except from conjecture and inference, why the application was made to the chief clerk during my absence.

Answer to the sixth interrogatory. I suppose by the word renewal in this interrogatory reissue is intended. The application for the reissue of the patent originally granted to William Woodworth on the 27th of December, 1828, for improvements in the machine for planing, tongueing, and grooving, was first made by William W. Woodworth, administrator of William Woodworth, on the 18th day of January, 1844. It was examined and rejected by Mr. Ellsworth, then Commissioner of Patents, on the ninth day of February, 1844; soon after the rejection of the application, the old patent was withdrawn from the office and never again returned to it to my knowledge, until the 7th day of July, 1845; on that day it was returned, and on the 8th day of July, 1845, it was reissued. It was returned under the old application, and reissued under that application, that is to say, no new fee was paid. The oath of the administrator was amended or made anew, on the fifth day of July, 1845, and various amendments were made in the third specification, which was the one on which the patent was finally reissued. It is proper that I should here state that when the original patent was surrendered for reissue on the 18th day of January, 1844, the administrator of William Woodworth, by whom the surrender was made, prayed that these several patents should be issued for as many combinations claimed in the application for reissue of the inventions of William Woodworth, and alleged to be covered by the old patent, and these several specifications were filed in the Patent office for that purpose. The patent was finally reissued in a single patent.

Answer to the seventh interrogatory. I cannot say that I know that the reissue of the said Woodworth patent was fraudulently obtained by said administrator during my absence. But it is my opinion that said reissue was surreptitiously procured by some person or persons acting for and in behalf of the administrator of William Woodworth, deceased, or of James G. Wilson, the present owner of said patent; my opinion is founded upon the following facts, viz:

The application for the reissue of the said Woodworth patent was made, as I have before stated, on the 18th day of January, 1844, to the Hon. Henry L. Ellsworth, who was then Commissioner of Patents, and the original patent was provisionally surrendered for that purpose. In making the application, Dr. Thomas P. Jones, late of Washington city, officiated as the agent of the administrator of Woodworth to procure the reissue. The petition prayed the Commissioner of Patents to grant the reissue in the form of these patents, for as many distinct inventions or combinations which it was alleged the old patent covered. On the ninth day of February, 1844, Mr. Ellsworth addressed a letter to Dr. Jones, the agent of Woodworth's administrators, in substance deciding against both the form of the application for the reissue, and the originality of the inventions claimed under the old patent, intimating in that letter to Dr. Jones that if he were required to decide definitively the question of originality of the inventions claimed under the old patent, it would be adverse to the old patent, and the patent would be retained, as he had a right in law to do with it. With regard to the form of the application, he took the ground that the old patent was for single inventions, and not for combinations, whereas the application was for the reissue of the old patent in these several patents for as many combinations. Upon the intimation of Mr. Ellsworth to Dr. Jones, that if he were required to decide definitively upon the originality of the inventions claimed under the old patent, it would be adverse to the claims set forth in that patent, and the old patent then provisionally surrendered retained, and of course cancelled and annulled, it was withdrawn from the Patent office, and never to my knowledge returned to the Patent office, nor the matter of its reissue again brought before the office until the seventh day of July, 1845, more than sixteen months afterwards. It is proposed here to state, that Charles M. Keller, now of the city of New York, was the principal examiner in the Patent office on the 18th day of January, 1844, when the application on the reissue of the said Woodworth patent was filed in the Patent office, and had charge of the class of inventions to which the subject matter of that patent belonged. From that time he remained in the Patent office in the same capacity of examiner, until the fifth day of May, 1845, (the day on which I assumed the duties of Commissioner of Patents,) when he resigned his office on the alleged ground that it would be more advantageous to him to become an agent to procure patents, than to remain in the Patent office in the capacity of an examiner. William P. N. Fitzgerald was on the 18th day of January, 1844, an assistant examiner in the Patent office, and remained in that capacity until the resignation of Mr. Keller, on the fifth day of May, 1845, when he acted temporarily as examiner, and was finally appointed by me to that office. Until Mr. Keller's resignation he was, as I have ever understood, his assistant. occupying the same room with him, and having the same class of inventions in his charge.

About the middle of June, 1845, I had occasion to return to New Hampshire to remove my family to Washing[ton,] and was absent from the city of Washington until about the middle of July following; during my absence Henry H. Sylvester, esq., then chief clerk of the Patent office, performed the duties of Commissioner of Patents as acting commissioner, as I have stated in my answer to third interrogatory. On the seventh day of July, 1845, the application for the reissue of the said Woodworth patent was renewed, the two first specifications, filed on the 18th of January, 1844, cancelled, and the third specification so altered as to embrace in its claims four combinations; and on the eighth day of July, 1845, it was examined, passed by the examiner, and reissued in the form of a new patent. I had not then returned to Washington, and of course it was done during my absence. It appears from the papers filed in the Patent office that Charles M. Keller, the late examiner, prepared the application or specification in the new form in which it was presented, the new clauses which were finally passed being in his handwriting; he has since publicly acknowledged that he was the agent by whom the reissue of the Woodworth patent was procured. It also appears from the files of the Patent office that William P. N. Fitzgerald, the assistant of Mr. Keller, when the latter filled the office of examiner of patents, was the examiner by whom the application for the reissue of the Woodworth patent, as amended by Mr. Keller, was examined and finally passed. It was then (on the eighth day of July, 1845,) countersigned by Mr. Sylvester, as acting commissioner, he not knowing any thing about the previous history of the patent, nor of Mr. Ellsworth's action in relation to it, as he has since informed me.

In the usual routine of business in the Patent office many patents, indeed a large majority of them, pass and are countersigned by the head of the office without his knowing any thing about them except their titles and the names of the patentees. All, or nearly all, of the applications are entered at the chief clerk's desk, who makes a minute of their reception in a book kept for that purpose; he then passes them over to the chief draughtsman, who also makes an entry of them in a book kept for the purpose by him, and then assigns them to the various examiners according to the classes of the inventions to which they belong; the specifications are then examined by [an] assistant examiner, and the models and drawings compared, and if all of them are found to be correct, the principal examiner proceeds to decide upon their originality, novelty, and patentability, and if they are found to be novel, original, and patentable, they are passed by him to be patented.

They are then returned to the chief clerk, who orders the patent to issue. They are then recorded and enrolled on parchment, and brought to the Commissioner for his signature. Thus that officer may not know of the pendency of an application until the patent is presented to him for his signature, unless the case is brought before him by an appeal by the applicant from the decision of the examiner, or unless the latter may bring the case to the attention of the Commissioner for advice and direction. The great number of applications, together with the numerous other duties devolved upon them, renders it absolutely impossible for the Commissioner of Patents to attend personally to the examination of applications, and hence the law has provided a class of officers, called examiners, to perform the duty of examination in the room of the Commissioner, upon whose honesty, integrity, and capacity the Commissioner is compelled to rely in a great measure for the official, faithful, and impartial discharge of the onerous and responsible duties of his office.

I state these facts in order to show that it was not remarkable that Mr. Sylvester should not know the previous history of the Woodworth

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patent, and the previous action of the Patent office in relation to it, before he countersigned the reissue on the 8th day of July, 1845, nor in my judgment was he in fault for not possessing that knowledge.

From the confidential and delicate relations which exist between the Commissioner of Patents and the examiners in the Patent office, it is most obvious that it is the duty of the latter class of officers to communicate to the Commissioner every fact or species of information in their possession concerning the operations and business of the office, in order that the officer may secure and enforce an efficient, pure, and impartial administration of the important and responsible bureau over which he presides. If they withheld such information, they commit a breach of trust which should subject them to summary removal at least.

Mr. Keller, the agent who procured the reissue of the Woodworth patent on the 8th day of July, 1845, of course well knew the previous history of that patent, and the action of the Patent office in relation to it; he knew that more than sixteen months before an application for its reissue had been made to Mr. Ellsworth, then the commissioner of patents, and virtually rejected by him, on the ground of want of originality in the inventions set forth and claimed in the original patent. He knew that, on the intimation of this opinion, the original patent was withdrawn from the Patent office; he also unquestionably knew that Mr. Ellsworth had, on the application of the administrator of Uri Emmons, for the extension of his patent, also for a planing machine, made before the application of Woodworth's administrator for the reissue of the Woodworth patent, delivered an elaborate opinion, showing that all the inventions or improvements claimed in the original Woodworth patent, of December 27th, 1828, except the device for grooving, were old long before Woodworth pretended to have invented them; and that the planing machine now known as the Woodworth machine was the invention of Uri Emmons, so far as it was original and new in this country; yet, in all probability knowing these facts, Mr. Keller never communicated them to Mr. Sylvester, as that gentleman has informed me, nor has he ever communicated them to me. In my judgment, considering the relations which he held to the Patent office before he became the agent to procure the reissue of the Woodworth patent, it was his duty to communicate, both to Mr. Sylvester and to me, all the knowledge which he possessed concerning the previous history of the Woodworth patent, and the action of the Patent office in reference to it, before he attempted to have the action of the office in relation to it reversed. Mr. Fitzgerald, the examiner who passed the reissued patent, I have no doubt also knew the same facts and circumstances touching the history of the Woodworth patent, and the previous action of the Patent office in relation to it which Mr. Keller knew, yet he never communicated any portion of that knowledge to Mr. Sylvester, as that gentleman has informed me, nor to me, as it was his unquestionable duty to do. And this duty was more imperative upon him from the fact, that he was well aware that both Mr. Sylvester and myself had just entered upon the discharge of the duties of our respective offices, and could not, in the short period of one month or six weeks, have learned much of the varied and multitudinous operations of the Patent office for years before; conscious of our want of experience in the business of the Patent office, and our want of knowledge of its previous action, particularly in reference to a matter so important to the public as the reissue of the Woodworth patent, it was his imperative duty to have communicated, both to Mr. Sylvester and myself, all the information in his possession in relation to that patent, before he presumed to reverse the previous decision of a former commissioner in relation to it. Nor can the fact that he failed to make known to me that Mr. Keller, the former examiner in the same room with himself, whose assistant he had for years been, had become the agent for the reissue of that important patent, be reconciled to that single and pure fidelity to the head of the Patent office, and to the public, which should ever characterize the conduct of an examiner of patents.

It is upon the facts and circumstances which I have above stated in this answer that I found the opinion, that the reissue of the Woodworth patent, dated July 8th, 1845, was surreptitiously obtained; I do certainly regard that reissue, obtained under the circumstances which I have above stated, as a fraud upon the Patent office and upon the public; as to the persons by whom that fraud was perpetrated, if they cannot be known from the facts which I have above stated, I cannot state who they are; I make charge against no one; I state the facts as I understand them, let them implicate whom they will.

It is proper for me to state further, in reference to this matter, that I did not obtain a knowledge of the circumstances attending the reissue of the Woodworth patent until after I left the Patent office, on the 19th day of May, 1845. The duties of the Commissioner of Patents are so multifarious and various, that he cannot and does not turn his attention to matters on which the office has previously acted, unless such matter is brought to his attention by some special cause or reason. Such was the case with regard to myself in relation to the Woodworth patent; I never had occasion to examine into the history of that patent, and the action of the Patent office in relation to it, until some three years after its reissue in 1845. During the session of Congress in 1848, I think, (it might have been the previous session,) I received a communication from the chairman of the Committee of Patents of the House of Representatives, requesting my opinion in reference to certain patents then pending before the House of Representatives for extension by act of Congress, among which was the patent of Uri Emmons for a planing machine. The application of the chairman of the Committee on Patents imposed on me the necessity of examining into the history of this Emmons' patent, and among the papers on file in the Patent office, in reference to that patent, was an elaborate opinion of my predecessor, Mr. Ellsworth, delivered before the board appointed to extend patents, on the application of the administrator of Uri Emmons for the extension of his patent. In that opinion Mr. Ellsworth went minutely into the history of the planing, tongueing, and grooving machine, and the comparative merits of both Woodworth and Emmons as improvers of that class of machines; in which opinion he expressed the belief that Woodworth was not the original inventor of any part of the planing machine, except the device for grooving, and that the planing machine as then (and now) constructed and used, was the invention of Uri Emmons, so far as any body in this country could claim originality in the invention of that machine. On learning Mr. Ellsworth's opinion in relation to the subject of planing machines, I made research into the history of that class of machines, and came to the same conclusions which were expressed by Mr. Ellsworth. I then communicated the result of my researches to the chairman of the Committee on Patents, recommending, inasmuch as the Woodworth patent had been extended, that the Emmons patent should also be extended; that it would be better for the public to have the rival patents in the field, instead of giving the exclusive monopoly of the market to one of them.

On this occasion I confined my examination entirely to the question of extension, never at once suspecting that there was any thing extraordinary or wrong in the reissue of the Woodworth patent, nor was my attention called to that subject until after I returned to the Patent office, in May, 1849. Some time afterwards, I think in the summer of that year, I was requested, by a gentleman in Philadelphia, to examine the files in the Patent office containing the application for the reissue of the Woodworth patent, and the proceedings of the Patent office upon that application. And in accordance with that request I did make such examination, and to my surprise and deep regret I found the facts to be as I have above stated them. My regret was caused by the consciousness that such a transaction was well calculated to throw suspicion and distrust upon the action of the Patent office, during my administration of that bureau, and that persons had been parties and agents in that transaction in whose integrity and fidelity I had reposed confidence.

I have deemed it proper to state these circumstances as an explanation of the fact, that the examiner who passed the reissued Woodworth patent was permitted to remain unmolested in his place until after I retired from the Patent office.

Answer to the eighth interrogatory. If the previous history of the Woodworth patent, and the action of the Patent office in reference to it, had been communicated to me, I would never have granted and countersigned the reissued patent of July 8th, 1845. The main reason which would have influenced me at the time of its reissue would have been the fact of its actual rejection by my predecessor, Mr. Ellsworth. While I was Commissioner of Patents I made a rule not to reverse his deliberate decisions; I aimed only to finish the business which he left unexecuted when he retired from the office, considering that I had no right, by law, to interfere with matters which he had definitively and solemnly settled. He had, with evident care and deliberation, virtually decided not only against the reissue of the Woodworth patent, in the form prayed for by the administrator, but also against the originality of the invention or improvements set forth and claimed in the old patent, and the administrator of Woodworth had acquiesced in that decision, by withdrawing from the Patent office the original patent, and never again bringing the matter before the Patent office while Mr. Ellsworth was commissioner. Under these circumstances, had I known them I should not have permitted the patent to be reissued.

With my present knowledge of the history of planing machines I should have rejected the application for the reissue on the ground of the want of novelty in the invention, claimed in the original patent, and also on the ground of want of novelty in the combinations claimed in the reissued patent; substantially the same combinations as are set forth and claimed in the reissued Woodworth patent of July 8th, 1845, may be found in certain French planing machines invented some years before the date of the old Woodworth patent. I think they are also pretty clearly described in the specification of Samuel Bentham in 1793, published in the English repertory of arts. If Wm. Woodworth improved any of the parts or elements of the combinations claimed in the reissued patent of July 8th, 1845, he would have been entitled to a patent for such improvement, but not for the combinations themselves.

Answer to the ninth interrogatory.

The most substantial and striking difference between the reissued patent for the Woodworth planing machine, bearing date July 8th, 1845, and the old patent for the same machine, bearing date December 27th, 1828, is in this, that the original patent set forth and claimed certain improvements in the machine for planing, tongueing, and grooving as single inventions, whereas the reissued patent abandons all the single inventions claimed in the original patent, and sets forth and claims combinations only, thus setting forth and claiming inventions or improvements of a totally different character from those set forth and claimed in the original patent, and which William Woodworth never supposed were his real inventions, if he had made any. Thus the reissued patent is not for the same invention claimed in the original patent, but for new and entirely different ones, and this was one of the formidable objections urged by Mr. Ellsworth against the reissue in his letter of February 9th, 1844, addressed to Doct. Thomas P. Jones, the original agent of William W. Woodworth, the administrator, for procuring the reissue.

And what is perhaps a more fatal objection to the reissued Woodworth patent is, that it, in many particulars, describes a different machine from that which was described and claimed in the specification attached to the original patent; some of those differences I will proceed to point out.

1. The old patent described no origination of a horizontal machine; the machine described in the specification, and represented in the drawing attached to the old patent being vertical, whereas, in the new pat-

ent, a machine essentially different from the machine described in the old patent is described. The machine as described and represented in one of the drawings of the new patent is a horizontal one, and contains certainly different devices for the plank to be planed towards the cutter wheels from those contained in the machine described in the old patent. In the reissued patent the plank is fed to the cutter by pressure rollers, which gave it a uniform and continuous motion, whereas the machine described in the old patent the plank was attached to a moveable carriage, upon which it was advanced by rack and pinion through the machine, a device which would not insure it a uniform and continuous motion.

2. The horizontal machine has top and bottom rollers directly above and below the board, these being necessary to the office of advancing the plank between rollers, one set of them pressing towards the other. This device is neither shown nor suggested in the old patent.

3. In the reissued patent a device is described for gauging the thickness to which the board was to be reduced by causing the rotating planing wheel to advance or recede from a stationary bed piece or plate; the old patent neither described nor intimates such a mode of gauging the thickness to which the board was to be reduced, but on the contrary, it expressly says, that the board or plank is to be "set so as to reduce it to any thickness required," on the carriage upon which it is confined and drawn through the *the* machine.

4. The drawing attached to the old patent shows that the planes rotate in the same direction with the advancing motion of the board. Thus rotating, they would cut downwards from the unplaned to the planed surface of the board, thus rendering unnecessary pressure rollers to prevent the board from being drawn towards the centre of the planing cylinder, which is their princip*le* and most important function, as set forth and claimed in the reissued patent. In the reissued patent, the planes are represented as rotating in a direction contrary to the advancing motion of the board. Thus rotating, they cut upwards from the planed to the unplaned surface of the board, thereby tending to draw the board upwards towards the centre of the planing cylinder, and rendering necessary pressure rollers or some equivalent device to prevent such tendency.

Requin's (French) patent, granted in 1817, represents the planing cylinder as rotating in the same way, and therefore rendering necessary a device equivalent to pressure rollers to prevent the upward tendency of the boards. Bentham also describes a similar motion of the planing cutters, necessarily employing a device analogous to pressure rollers to prevent the upward tendency of the board.

5. The vertical rollers represented in the old patent, which correspond with the pressure rollers in the horizontal machine, described and represented in the reissued patent, if there are any rollers in the old machine which do correspond with any described and represented in the reissued patent, have no upper journal, as appears by the drawings attached to the old patent, and therefore are not pressure rollers, not

being able to perform that function efficiently; nor was it necessary that they should perform such a function in a machine in which the revolving planes rotated in the same direction with the advancing motion of the board, and therefore cut downwards from the unplaned to the planed surface.

6. The old patent describes friction wheels for the purpose of reducing brick, metallic, and mineral substances to an equal thickness; when that would perform such a function, could not of course be cutting wheels. The reissued patent omits the description of such wheels or other means for the reduction of brick, &c., and therefore cannot be for the same invention.

7. The devices claimed in the old patent as the invention of William Woodworth were: 1. The improvement and application of cutter or planing wheels to planing boards, timber, or other material; 2. An improved method of cutters for grooving and tongueing and cutting mouldings on wood, stone, iron, metal, or other materials, and for facing and dressing brick; and 3. The application of circular saws for reducing floor plank and other material to a width. These were all for single improvements, presupposing (what was actually the fact) the existence of the machine for planing, tongueing, and grooving at one operation in all its essential elements and combinations; whereas the reissued patent of the 8th July, 1845, abandons all these single inventions or improvements claimed in the original patent, thus admitting them to be old, and claims the following combinations, viz: 1. The employment of rotating planes, with pressure rollers, to prevent the board from being drawn upwards by the action of the planes towards the centre of the planing cylinder. 2. The combination of the rotating planes with the cutter wheels for tongueing and grooving, for the purpose of planing, tongueing, and grooving at one operation. 3d. The combination of the tongueing and grooving cutter wheels for tongueing and grooving boards at one operation; and 4th. The combination of either the tongueing or grooving cutter wheels for tongueing and grooving boards, &c., with the pressure rollers.

Thus it appears that the reissued patent describes and claims a machine and devices not described and claimed in the old patent, but differs from the old patent *but differs from the old patent* in many important, substantial, and material particulars. I do not now recall to mind any other particulars in which the reissued patent differs from the old patent.

I deem it proper to explain a single term used in this deposition. I have spoken of the original patent of William Woodworth having been previously surrendered to Mr. Ellsworth for reissue. The law or the section of the law, and its several additions, authorizing surrenders for the reissue and correction of patents, authorizes also the Commissioner of Patents to make an examination into the originality and patentability of the invention claimed in the old patent; and if, on such examination, he finds that the invention is not original and patentable, it authorizes the Commissioner to withhold the patent, in effect declaring it null and void. To avoid such a result, and to enable the patentee to test the validity of his patent in a court of justice, the patent is not unconditionally surrendered, but only provisionally; so that if the Commissioner shall, on his examination of the patent on an application for reissue, come to the conclusion that the patentee was not the inventor of the thing claimed in his old patent, and not entitled to the patent, he may withdraw his patent from the Patent office on an intimation from the Commissioner that his opinion is adverse to the validity of the old patent. If the surrender was unconditional, the patentee could not withdraw his patent, but must abide the decision of the Commissioner, whatever the decision may be.

Such was the course of procedure with the original Woodworth patent, when it was first surrendered for reissue, as I have before stated it was provisionally surrendered. Mr. Ellsworth not only rejected the application in the form in which it was made, but he intimated that if he were urged to a decision upon the originality of the invention claimed under the old patent, it would be adverse to it, and the patent would be withheld. And upon that intimation the patent was withdrawn. It could not have been withdrawn if it had been the custom of the Patent office to regard such surrender as unconditional. This practice of the Patent office grows out of a desire to favor patentees as much as possible, consistently with that duty which the office owes the public. And further this deponent saith not.

EDMUND BURKE.

Subscribed and sworn to, before me, May 3d, A. D. 1851.

RALPH METCALF,
Commissioner.

[*Eagle.*]

In the circuit court of the United States, for the western district of Pennsylvania, in the third circuit. No. of November term, 1851.

ELISHA BLOOMER
vs.
JOHN McQUEWAN, Samuel Douglass, and Allen B. McQuewan.

[Seal of the circuit court.] The President of the United States, to Andrew Wylie, jr., esq., commissioner on the part of defendants.

Know you, that in confidence of your prudence and integrity we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule, lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain action bill in equity therein depending, wherein the said Elisha Bloomer is plaintiff, and John McQuewan, Samuel Douglass, and Allen B. McQuewan, are defendants, to call before you at a certain day and place by you for that purpose appointed, all and every person or persons, who may be named to you by the said defendants, as witnesses in the said action, and then and there to examine them on their respective oaths or affirmations, on certain interrogations hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said court, closed up under your seals, firmly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Pittsburgh, this 29th day of April, A. D. 1851, and of the independence of the United States the seventy-fifth.

H. SPROUL, *Clerk*.

Circuit court of the United States, of the western district of Pennsylvania. No. 7, of November term, 1850.

ELISHA BLOOMER
vs.
JOHN McQUEWAN, Samuel Douglass, and
Allen B. McQuewan.

Enter rule for a commission to take the testimony of witnesses at Washington city, to be read in evidence on the part of defendants, and file the following interrogatories:

1. Are you acquainted with the patents issued to William Woodworth in 1828 and William W. Woodworth in 1845, for an improvement in the method of planing, tongueing, and grooving, &c., of plank, &c., and have you carefully examined the specifications of said patents?

2. What has been your profession or employment, and what are your qualifications for judging of the operations and nature of the machines as described in said specifications?

3. Do you believe that the machine, as described in the said patent of 1828, is the same machine as described in the amended specification of 1845; and if not, set forth particularly in what the specifications of the patents differ in their descriptions of different machines.

4. State your opinion as to the substantial difference, if any, in their nature and mode of operation of the machines, as described in said specifications.

5. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large.

JAMES DUNLOP,
Attorney for defendants.

I do hereby certify, that the foregoing is a true copy of the interrogatories filed by defendants.

H. SPROUL, *Clerk.*

Deposition of a witness produced, sworn, and examined, on the sixth day of May, A. D. 1851, at the city of Washington, in the District of Columbia, by virtue of a commission issuing from the circuit court of the United States, in the third circuit, to me, Andrew Wylie, jr., directed, for the examination of witnesses in a certain cause depending in the said court, wherein Elisha Bloomer is plaintiff, and John McQuewan, Samuel Douglass, and Allen B. McQuewan are defendants.

Walter R. Johnson, of the city and district aforesaid, by occupation a civil engineer, and counsel for patentees, aged fifty years, or thereabouts, being produced, sworn, and examined on behalf of the defendants, on the interrogatories in chief filed in said court by said defendants, to the first (1st) interrogatory in chief he answers as follows, in reply to the several interrogatories, (which are quoted:)

1st interrogatory. Are you acquainted with the patents issued to William Woodworth in 1828, and William W. Woodworth, in 1845, for an improvement in the method of planing, tongueing, and grooving, &c., of plank, &c., and have you carefully examined the specifications of said patent?

Answer. I am acquainted with the patents referred to in this interrogatory, and have carefully examined the specifications of said patent.

2d interrogatory. What has been your profession or employment, and what are your qualifications for judging of the operations and nature of the machines as described in said specifications?

Answer. My profession has been that of professor of natural philosophy and mechanics, and for several years last past I have been employed as a mechanical engineer and solicitor for patents. I consider that the study which I have devoted to the subject of machinery, and the experience which I have had in the examination of machinery and models, and in the description of their peculiar structures and constituent parts, the modes of combining and applying mechanical powers, and their modes of operation, have fully qualified me for judging of the operations and nature of the machines as described in the two Woodworth specifications.

3d interrogatory. Do you believe that the machine, as described in the said patent of 1828, is the same machine as described in the amended specification of 1845? And if not, set *set* forth particularly in what the specifications of the patents differ in their descriptions of different machines.

Answer. I do not believe that the machine, as described in the patent of 1828, is the same machine as described in the amended specification of 1845. The first difference which I note is, that the two specifications do not set forth the same purpose of the machines which they respectively describe. The machine described in the patent of

1828 is represented to be adapted to operating on two distinct classes of substances; the one class including boards and other articles of lumber, and the other class hard materials, as stone, metals, and bricks; and the machine is distinctly claimed for the purpose of facing and dressing brick.

In the specification of 1845, I find the machine to be set forth as adapted only to operate on the first of the above named classes of materials, namely, to the planing, tongueing, and grooving plank or boards; and I find neither in the title specification nor claims any mention of facing or dressing brick, stone, or other similar material.

The second difference which I have noted is, that the two specifications describe different instruments or operating tools for reducing materials to a uniform width. The specification of 1828 sets forth that the materials will be reduced to a width by circular saws, or by friction wheels, "as the case may be;" and, in my opinion, these two different kinds of implements are adapted to slitting up or reducing to a width—the one, boards and plank, and the other, stone, bricks, and similar hard substances, on which the edge of a disk without teeth, constituting a "friction wheel," is adapted to operate. Circular saws are not implements fitted to slit up stones and bricks, nor are friction wheels fit to slit up or reduce to a width planks and boards. In the specification of 1845, I find, instead of friction wheels, that "reducing wheels" are set forth as a means of reducing plank or boards to a width, and said reducing wheels are declared to be "revolving cutter wheels," resembling in their construction and action the planing and reducing wheel described in the same patent. In the same patent of 1845, I find it declared that the board, after passing the planing wheel, is tongued and grooved by revolving cutter wheels; and that it is, at the same time, and by the same operation, reduced to an "exact width throughout."

I do not find, in the specification of 1828, any declaration or indication that the boards were to be first planed and then reduced to a width at the same time and by the same operation at which they were tongued and grooved. In that specification the reducing to a width is an operation performed prior and preparatory to both the tongueing, planing, and grooving, and no revolving cutter wheel, formed like a "planing wheel," is therein set forth as performing the function of reducing the board to a width throughout. I do not find that in 1828 the boards were to be more than once reduced to a width, and that once was before the operation of planing was gone through, and not after it.

In the third place, I find in the patent of 1828 the axis of the planing cylinder to be represented as fixed in one position, and that the plank or other material was to be so "set on a carriage" as to reduce it to the required thickness. In the patent of 1845, I find that provision is made for moving the axis of the cutting cylinder or planing wheel nearer to or further from the work. This mobility I conceive to be incompatible with the action of a vertical planing cylinder, intended to plane two boards at the same time, as described and represented in the patent of 1828.

In the fourth place, I find that in the patent of 1828 the material to be operated upon were set upon a carriage in order to be planed and reduced to a thickness, the use of which carriage necessarily implies a reciprocating action of the machine, an alternate working and ceasing to work of the planing cutters, the cessation and loss of time occurring while the carriage returned to receive a fresh board or other piece of material to work upon. In the patent of 1845, I find that there are introduced structures and constituent parts, differing from a carriage in their mode of operation, and which parts are adapted to machines which are continuous, and not intermitting, in their action; such are endless chains with chain wheels, bands passing around drums, geared friction rollers and pressure rollers, in combination with a bed plate used directly under the planing cylinder, whereby the boards, instead of being supplied to the machine intermittingly, are, with great economy of time, made to succeed each other continuously.

In the fifth place, I find in the patent of 1828 no specific directions for avoiding the dulling of planing cutters by gritty matter. In the patent of 1845, I find that there is such a direction, and that it is coupled with instructions as to the direction in which the board is to be fed to the cutters, and that this necessarily involves the instruction as to cutting from the planed towards the unplaned surface, as well as the specification of means to prevent the board from being drawn upward towards the cutters, when they made their cut from the planed towards the unplaned surface.

From an inspection of the drawing of the Woodworth machine of 1828, on file in the Patent office, and which was sworn to by William Woodworth, in 1838, as truly representing the machine, for which he received a patent in 1828, I am led to the conclusion that the planing cutters in that machine made their cut from the unplaned towards the planed surface; and as I find in the language of the specification of 1828 nothing about dulling the cutters by gritty matter, nothing about the cutters cutting in a direction contrary to that in which the board is made to advance, nothing about cutting upward, or from the planed to the unplaned surface, as a means of avoiding the effect of grit, and nothing about rollers to prevent the board from being drawn up by the planes "when cutting upwards," or from the planed towards the unplaned surface, I am irresistibly led to conclude that the specification of 1828 does not contain any instructions for building a machine in which rollers were to be combined with rotating planes, for the purpose of preventing the board from being drawn upward by the planes when cutting upwards, or from the planed towards the unplaned surface.

4th interrogatory. State your opinion of the substantial difference, if any, in their nature and mode of operation of the machines as described in said specification.

Answer. The substantial difference of the machines described in the two specifications are, in my opinion, dependent on the fact that they have not, in the first place, the same peculiar structure and constituent parts. I refer herein to what I have said of the difference between a "friction wheel" and a "revolving cutter wheel," for dividing to equal widths, the latter having cutters projecting from a plate or wheel, the other without such projections. To what I have said of the difference between a planing machine having as a constituent part a carriage moved by a rack and pinion, and another planing machine which dispenses with a carriage, and uses feed rollers, or endless chains or bands, to feed the boards in a continuous succession, I also refer to the peculiar structures whereby the board is made to meet the motion of the cutting edges in a direction contrary to that in which they revolve, instead of coming to them by advancing in the same direction in which they advance; and I refer to the constituent parts which, in the patent of 1845, but not in that of 1828, are alleged to be used to prevent the lifting upward of the board towards the cutters, when cutting from the planed towards the unplaned surface. They differ, in the second place, in not having the same mode of operation; that of 1828 operates to reduce boards to a width by circular saws, of which the axis are in lines crossing the breadth, and parallel to the flat surface of the board; that of 1845 uses reducing cutter wheels, operating while moving on axles, standing at right angles to the plane of the board's flat surface, and wholly beyond its edges. This mode of operating to reduce the board to a uniform width throughout is different from the modus operandi of circular saws, for the latter leave solid strips of wood on both sides of the cut which they make; but the revolving cutter wheels, when employed as described in the patents of 1845, cut up all the surplus side timber into fine chips, and only leave in a solid state that which can pass between the nearest peripheries of the cutters which cut the two opposite edges of the board.

They differ in the modes of adjusting the cutting tools to the breadths of stuff to be obtained. The circular saws are adjusted by moving nearer to or farther from each other on a common axis; the reducing cutter-wheels not being set on the same axis, are only to be adjusted by removing the axles of the wheels themselves nearer to or farther from each other. The mode of operating in a reciprocating machine is such as to use very uneconomically the moving force and the laborer employed about such a machine.

The mode of operating of a continuously acting machine is to use moving forces steadily and economically, and avoid fatiguing operations by moving from one place to another to adjust materials on a carriage, and it prevents the jars and derangement of parts of machinery usually produced by reversing motions.

The mode of operating to plane from within outward, or from the planed towards the unplaned surface, besides avoiding the grit, is believed to have the advantage of planing the plank more evenly and better, than if the cut were made in the reverse direction. Neither of these advantages appear to have been set forth or ever hinted at by

William Woodworth in his specification of 1828; but the reverse mode of operating is in my opinion intended to be represented in the drawing to which I have herein before referred. The mode of cutting from without inward causes every successive knife-edge of the planing cylinder, as it strikes the board, to urge it downward upon the bed plate or bench, and not to lift it upward; but the mode of cutting from the planed towards the unplaned surface, gives to the cutters a slight tendency to lift the board away from the bench, and requires a moderate resistance to prevent that lifting effect from taking place.

In the third place, I find that the modes of combining and applying machinery is different to make a reciprocating planing machine like that of 1828, from what it is to make a continuously acting planing machine like that of 1845; and a different mode of applying machinery is used to make a machine cut from the planed towards the unplaned surface, from what is demanded in order to cut in the reverse direction; and a different combination of machinery is necessary where a tendency of the board to rise from its bench is to be obviated, from that which is requisite where no such tendency exists.

In the fourth place, I am of opinion that the same effects are not produced in the two machines by the same mode of operation, but that superior effects are produced, and with more economy, by the machine described and operating as in the patent of 1845, to those produced by the mode of operation described in 1828, as I have already explained in this deposition. The two machines differ not in form only, but in material parts of their structure, as already stated.

In my opinion, two machines, which are not the same either in their peculiar structure and constituent parts, or in their modes of operation; which are not the same in their modes of applying and combining mechanical power, and which do not produce the same effects by the same mode of operation, but which differ from each other not merely in form, but in material portions of their structure, so as not to produce the same effects in the same way; that two such machines have those substantial differences which constitute them different machines.

5th interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large.

Answer. I do not know that I can add anything material to the subject of this examination which I have not embraced in the answers to the preceding interrogatories. I do not know the matters in question in this cause, further than as indicated by the interrogatories to which I have already replied.

WALTER R. JOHNSON.

ANDREW WYLIE, jr., *comm'r.*

ELISHA BLOOMER
vs.
WILLIAM DILWORTH and McQuewan and Douglass.
} No. , of November term, 1850.

To defendants above named, and James Dunlop, their attorney.

You will please take notice, that depositions of witnesses to be read in evidence upon the trial of the above causes will be taken before Wm. Webb, esq., commissioner, at Washington city, in his office, upon Friday, 25th of April, A. D. 1851, at twelve o'clock.

SHALER & STANTON,
April 21st, 1851. *Attorneys for plaintiff.*

Circuit court of the United States, for the western district of Pennsylvania, in the third circuit. In equity.

ELISHA BLOOMER
vs.
WILLIAM DILWORTH and McQuewan and Douglass et al.

UNITED STATES OF AMERICA,
District of Columbia, *ss.*

Be it remembered, that on this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-one, I, William B. Webb, a commissioner duly appointed by the circuit court of the United States, for the District Columbia, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20, 1812; and the act of Congress entitled "An act in addition to an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817; and the act entitled an act to establish the judicial courts of the United States, passed September 24, 1789, did call and cause to be and personally before me, at my office, on 6th street, between D and E streets, in the city of Washington, in the said District of Columbia, Henry H. Sylvester, William P. N. Fitzgerald, David A. Hall, and Arthur L. McIntire, witnesses to be examined on the part and behalf of the plaintiff in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States, in and for the western district of Pennsylvania, for the third circuit, sitting as a court of chancery, in which Elisha Bloomer is plaintiff, and William Dilworth, McQuewans, Douglass, and others, are defendants; and I do further certify, that the notice of said examination hereto affixed and endorsed, served on me this 22d April, 1851, James Dunlap, attorney, for the defendants, was duly received by me through the post office; that the said Elisha Bloomer, by his attorney, Geo.

G. Sickels, esq., appearing before me on the aforesaid twenty-fifth day of April, I have therefore proceeded with said examination.

And the said Henry H. Sylvester, William P. N. Fitzgerald, David A. Hall, and Arthur L. McIntire, being carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, depose and say, &c.:

1

Henry H. Sylvester, a witness produced on the part of the plaintiff, having been first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the questions proposed, deposes and says:

Question 1. What is your age?

Answer. I am fifty years of age.

W. B. W. Question 2. Where is your residence?

[Answer] My residence is Charlestown, New Hampshire; but at present I am residing in Washington city.

Question 3. What is your business or profession?

Answer. I am a yeoman.

Question 4. Were you at any time heretofore connected with the Patent office of the United States? If you answer yes, state what position you held therein, and for what length of time.

Answer. I was connected with the Patent office; I was
W. B. W. chief clerk in that office from May, 1845, until June, 1849.

Question 4. Do you know whether a patent originally issued to William Woodworth on the 27th December, 1828, for a machine for dressing board and plank and other material, was
W. B. W. reissued during the time that you were in the office? If you answer yes, state all that you know about said reissue of said patent.

Answer. The said patent was reissued during the time that I was in the office; the reissued patent was placed upon my desk, bearing date July 8th, 1845, coming from the examiner who had charge of that class of inventions, for my signature; the patent had been previously signed by the Secretary of State; it was signed by me in the common routine of my duty in the office, as acting commissioner for the time being.

Question 5. Was Mr. Burke, the commissioner, at the city of Washington, or was he absent at that time?

Answer. He was absent in the State of New Hampshire.

Question 6. Did Mr. Burke during the time that he was commissioner express any disapprobation about reissuing of said patent?

Answer. Not to my knowledge.

H. H. SYLVESTER.

Sworn to and subscribed before me, this twenty-fifth day of April, 1851.

W. B. WEBB,
U. S. Commissione

William P. N. Fitzgerald, a witness produced on the part of the plaintiff, having been first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to questions, deposes and says:

Question 1. Where do you reside?

Answer. I reside in the city of Washington.

Question 2. What is your age?

Answer. I am upwards of forty years of age.

Question 3. What is your business, profession, or occupation?

Answer. I am one of the chief examiners of patents, in the Patent office of the United States.

Question 4. How long have you been engaged in the Patent office of the United States?

Answer. From January, 1840, until the present time.

Question 5. Who was the examiner in the Patent office for the class of machines for working lumber in July, 1845?

Answer. I was.

Question 6. Do you know of a patent having been heretofore issued to William Woodworth, for an improvement in machinery for planing, tongueing, and grooving boards, and plank, dated 27th December, 1828?

Answer. It appears by the records of the office that such a patent was then granted.

Question 7. Have you a knowledge of an application having been made for a reissue of said patent? If you answer yes, state the facts and circumstances connected therewith.

Answer. Such an application was made I think in 1844; it was for some time pending,and not far from the 1st of July, 1845; it was, after having been for some time postponed, called up for action in the usual course of business; it was examined in the usual way with all the care which appeared to me to be necessary, and after such examination I approved the claims, amended as I had required, and as they were afterwards issued in the patent; I then sent the case in the usual course of business to the draughtsman of the office. Here my duty in relation to the case terminated.

W. P. N. FITZGERALD.

Sworn to and subscribed before me this twenty-fifth day of April, 1851.
W. B. WEBB,
U. S. commissioner.

David A. Hall, a witness produced by the plaintiff, having been first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to questions proposed, deposes and says:

Question 1. Where do you reside?

Answer. In the city of Washington.

Question 2. What is your age?

Answer. I am fifty years and upwards.

Question 3. What is your profession?

Answer. I am a counsellor at law.

Question 4. Are you acquainted with Edmund Burke, late commissioner of the Patent office of the United States?

Answer. I am pretty well acquainted with him; I have known him for ten years last past.

Question 5. Are you acquainted with the patent originally issued to William Woodworth on the 27th of December, 1828, for an improvement in machinery for dressing flooring boards, planks, &c., reissued on the 8th of July, 1845?

Answer. I am well acquainted with the history of the Woodworth patent referred to.

Question 6. Have you at any time heretofore conversed with Edmund Burke, the late commissioner, referred to in question No. 2, about said patents or either of them? If you have, will you state the conversation, and the time as near as you can recollect?

Answer. I had a conversation with Mr. Burke, the late commissioner of patents in the summer of 1850, soon after Mr. Burke had dissolved his connexion with the Union newspaper. In that conversation Mr. Burke said that he should quit Washington and return to New Hampshire; that he should hereafter devote himself to his profession as a lawyer in patent cases; that he already had been retained in the important case of assignees of Woodworth against Norcross, who had obtained a patent for a machine for dressing flooring boards; Mr. Burke said that he was retained against the Woodworth patent, and had received or was to receive a fee of two thousand dollars.

Whether the fee was to be paid absolutely or upon the contingency of success I am not certain, but am very certain as to the amount, and also that I have detailed the substance of the conversation with Mr. Burke.

Question 7. Have you any interest in the Woodworth patent?

Answer. I have not.

Question 8. Have you a retainer, or are you acting as counsel for the administrator or assignees under said patent?

Answer. I have no retainer, and am not of counsel for the said administrator or his assignees.

DAVID A. HALL.

Sworn to and subscribed before me this twenty-fifth day of April, 1851.

W. B. WEBB,
U. S. commissioner.

Arthur L. McIntire, a witness produced on the part of the plaintiff, having been first duly cautioned and sworn to tell the truth, and nothing but the truth, in answer to questions, deposes and says:

Question 1. Where do you reside?

Answer. In the city of Washington.

Question 2. How old are you?

Answer. Over forty.

Question 3. What is your profession or occupation?

Answer. I am now, and have been for the last ten or twelve years, draughtsman of the United States Patent office.

Question 4. Have you a recollection, in your capacity as draughtsman of the office, of a patent having been reissued to William W. Woodworth, as administrator of William Woodworth, deceased, for a machine for planing, and tongueing, and grooving boards and plank; if you answer yes, state the time as near as you can, and what were your duties connected with the reissue of said patent.

Answer. I have a recollection that the patent was granted in the form of a reissue of the Woodworth patent of 27th December, 1825,
and was reissued in July, 1845. The reissued patent, after
W. B. W. the chief examiner having charge of that department had approved the claims, it was sent to my department in the usual way, in
order that it might be entered in my books, and sent forward
W. B. W. to be recorded; it was recorded and sent, as all patents are,
W. B. W. by the messenger to the Secretary of State, as is usual.

ARTHUR L. McINTIRE.

Sworn to and subscribed before me, this twenty-fifth day of April, 1851.

W. B. WEBB,
U. S. commissioner.

And I, William B. Webb, a commissioner duly appointed by the circuit court of the United States, for the district of Columbia, to take affidavits and bail in civil causes depending in the courts of the United States as aforesaid, do further certify, that the preceding depositions were reduced to writing by me, in the presence of said witnesses, and that the said depositions having been by me carefully read over to said witnesses, were by them in my presence signed; that the said depositions were by me carefully sealed up, directed to the circuit court of the United States, for the western district of Pennsylvania, for the third circuit, and by me deposited in the post office at Washington city; and I do further certify, that I am not of counsel for any or either of the parties to the said suits, nor am I interested in the event thereof.

In testimony whereof I have hereunto set my hand and seal, this fifth day of May, 1851.

W. B. WEBB, [SEAL.]
U. S. commissioner.

DISTRICT OF COLUMBIA,
County of Washington, ss.

I, John H. Smith, clerk of the circuit court of the United States, for the district aforesaid, do hereby certify, that William B. Webb, whose

7335.

name is affixed to the foregoing certificate is and was, at the time of signing the same, a commissioner to take affidavits and bail in civil causes depending in the courts of the United States, duly appointed by the aforesaid circuit court, and that his acts and deeds as such are entitled to full credit and respect.

In testimony whereof I have hereunto set my hand and affixed my
[L. S.] seal of office, this fifth day of May, 1851.

JNO. H. SMITH, *Clerk.*

UNITED STATES,
Eastern district of Pennsylvania, sct.

Be it remembered, that on the eighteenth day of April, A. D. 1851, personally appeared at my office, State house, in the city of Philadelphia, before me, Charles F. Heazlett, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., Loring L. Johnson, to testify and the truth to say, on the part and behalf of the plaintiff in certain suits or matters of controversy now depending and undetermined in the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, wherein Elisha Bloomer is the plaintiff, and McQuewan and Douglass are defendants; and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Question. What is your age, and where do you reside?

Answer. My age is between 52 and 53 years. I reside in West Chester county, New York.

Question. What is your business or profession?

Answer. I am a machinist.

Question. How long have you been engaged as a machinist.

Answer. Since eighteen hundred and twenty-seven.

Question. Were you at any time acquainted with one Wm. Woodworth, now deceased?

Answer. I was first acquainted with him in Sheffield, Massachusetts, as early as 1818 or 1819.

Question. Did William Woodworth reside at Sheffield at the date you have mentioned, or at some other place?

Answer. He resided at Sheffield; kept a boarding house called the Mansion house.

Question. After 1819, do you know of William Woodworth having resided at any place besides Sheffield? If you answer yes, state the time and place.

Answer. In 1825 I moved to Hudson; Mr. Woodworth lived there, and we soon renewed our old acquaintance. At that time he was engaged in making ship blocks at a place called Stouhe creek, below

Hudson; he got his hand injured in that mill in 1826 or 1827; whilst his hand was yet in a sling he came to the shop where I was at work.

Question. While you resided at Hudson, do you recollect William Woodworth saying anything about having invented a machine for dressing boards and plank; if yea, will you state the time when, and what he said, as near as you can recollect.

Answer. I do recollect Mr. Woodworth saying that he had invented a machine for planing floor boards, and reducing the same to a thickness and width. I think this was in 1827, and he at that time wanted me to assist him in building it; I declined, assigning as a reason that he was poor pay, and when he got Mr. Strong to be responsible for the pay I would work at the machine.

Question. Can you now recollect the month of the year 1827 that you had the conversation referred to?

Answer. I can't. I think it was towards the last of the year.

Question. At the time that Mr. Woodworth spoke of the invention of the planing machine, did he show you any drawing or drawings of his plan, or did he describe in any way his plan?

Answer He described, by a drawing which he showed to me, a rotating cylinder and cutters for grooving and tongueing. He described to me rollers for holding the plank in its place whilst acted upon by the rotating cutters. His description enabled me to understand the operation of the machine.

Question. How were you employed at that time?

Answer. I was employed as a cabinet maker by Nathaniel Bowman, of Hudson.

Question. After the interview with Woodworth, and his description to you of his contemplated machine, were you at any time in his employ? If you answer yes, state how you were employed; at whose shop; and what was the business you were employed about.

Answer. Mr. Woodworth had the superintendence of the block-mill, and I received instructions from him to make some patterns, which I made, and these patterns were designed for the machine used for making blocks. I was also employed by him after the time of making the patterns referred to. I was employed at Mr. Dunbar's shop in building the planing machine which Woodworth had before alluded to.

Question. In what capacity did you act at the shop of Dunbar?

Answer. I acted as foreman, and adjusted the cutters and tools to carry out the design of Woodworth.

Question. Can you recollect the time you commenced working as foreman for Woodworth at Dunbar's shop?

Answer. It was in July, 1828.

Question. What was the condition of the work on the machine of Woodworth at that time? Had it been commenced, or was it commenced after you entered into his employ?

Answer. When I commenced it was far advanced, particularly the wood work.

Question. After you commenced working on the machine, from whom did you receive your instructions for the work?

Answer. I received all my instructions from Mr. Woodworth.

Question. Can you recollect how many persons were employed in building the machine you referred to, after you commenced working thereon, or about how many?

Answer. I should think there was five or six in all.

Question. Can you name any or all of the persons who were so employed? If so, name such as you can.

Answer. My brother, Jared Johnson, was one, Dunbar, Stillman, were two others, myself, and I can't recollect the names of the others.

Question. Do you know whether Mr. Stillman is living or dead?

Answer. I don't know.

Question. Where does Jared Johnson reside at this time?

Answer. In Sheffield, Massachusetts.

Question. During the time that the machine of Woodworth's was building, was the shop open, and was it or not frequented by strangers and citizens to look at the machine as it progressed? If yea, state the facts as nearly as you can now recollect.

Answer. The shop was always open [all] day, and the invention being considered a new one, attracted the attention of a great many individuals whilst in progress of building.

Question. How long did you work on said machine at Hudson?

Answer. It was something more than a month. On the twelfth of September, 1828, it was taken down to New York.

Question. In what state of forwardness was the machine at the time that it was ready to be taken to New York?

Answer. It was finished sufficiently to be put in operation at Mr. Dunbar's shop.

Question. Was it put in operation at Mr. Dunbar's shop?

Answer. It was.

Qnestion. At what time, as near as you can recollect?

Answer. Not more than two or three days previous to its being taken down to New York.

Question. What operation was performed with the machine at Dunbar's shop?

Answer. It planed, tongued, and grooved part of a plank or board.

Question. Do you recollect why only a part of a plank or board was worked?

Answer. I do recollect; Mr. Dunbar had a small steam engine which had not sufficient power to work the whole length of the board; the steam was *sooned* worked off.

Question. Was the work well done or illy done on the board or plank?

Answer. It was well done, considering the first experiment.

Question. Who accompanied the machine to New York?

Answer. I did; I had charge of it.

Question. Was the machine afterwards put up in New York? If you answer yes, where?

Answer. It was put up at the dry dock steam saw mill in the city of New York.

Question. How long after the machine left Hudson was it that it was put up in New York, as near as you can now recollect?

Answer. I think it was probably eight days before it was put in operation at the dry dock.

Question. Did any person aid you in putting the machine in operation at the dry dock? If any, who?

Answer. My brother Jared was my principal help; I had some laborers; I don't recollect their names.

Question. Will you describe, as fully as you can now recollect, the construction and mode of operation of the said machine, as it was before it left Hudson?

Answer. The cylinder was vertical; the tongueing and grooving tools were horizontal, and were designed to dress planks on each side of the cylinder. The pressure rollers were vertical, and were placed as near to the cylinder as was convenient to act against the plank.

Question. In what manner was the plank forwarded to the cylinder and cutters?

Answer. The plank was placed against the carriage, which was drawn through by means of a windlass at that time.

Question. In what way was the thickness of the board or plank regulated at Hudson?

Answer. The regulation for the thickness was to line up on the back of the carriage, or more properly by the pressure or forwarding rollers, in connexion with the carriage and cutting cylinder.

Question. In what way were the pressure rollers geared at Hudson?

Answer. They were geared so as to allow the rollers to yield, so as to accommodate the thickness of the plank. In the first place, there were springs to press against the boxes in which the journals of the rollers worked, which brought the rollers up against the plank and kept it in its place.

Question. After the machine was removed to New York, were any alterations found to be necessary about the rollers?

Answer. The springs were found to be insufficient; levers and weights were added to remedy the insufficiency.

Question. Were there any other alterations or additions made to the machine, after it was removed to New York, besides adding levers and weights to the rollers?

Answer. There were alterations, and the principal one, which I now recollect, was adding on tools to the cutter wheels, so as to reduce the width of the plank, and in place of the windlass was a rack and pinion added to draw the carriage through; those were all the alterations that were made that I now recollect.

Question. Will you describe in what way the tools, to reduce to a width, were added to the cutter wheels, as you have stated in your previous answer?

Answer. There were intermediate cutters to finish the end of the tongue; the original one finished the rebate; the cutters were so arranged as to finish the edge; the original grooving tool cut the depth of the groove.

Question. After the levers and weights were added to the rollers, what was the condition of the work performed by the machine; was it better than before the levers and weights were added?

Answer. It was better in every particular.

Question. How long did you remain with the machine at the dry dock, or about how long?

Answer. Something near a year.

Question. Was the machine operated during the time that you were with it, daily, when in order or otherwise?

Answer. It run pretty constantly; sometimes we had to repair it to make the parts stouter that were weak.

Question. After the machine referred to was moved to New York, do you know of Mr. Woodworth having constructed, or caused to be constructed, a model of said machine also?

Answer. I do; I was employed as the builder.

Question. Can you state in what month the model was commenced, and when it was completed?

Answer. It was commenced very soon after the machine was put in operation; it was finished and exhibited at the Exchange, in Wall street, previous to the 27th December, 1828.

Question. In constructing the model referred to, were any alterations made, or was it constructed in all respects the same as you have described the machine which was in operation at the dry dock; if there were any differences in the model, state what difference.

Answer. The construction was the same, embodying all the machinery, but made more compact than the working machine; I mean to say that the model is a fair representation of the first machine.

Question. Have you seen the model referred to, and which was made by you recently; if yea, where and when?

Answer. I have had access to it several times recently; I saw it today in the room of the circuit court of the U. S., in and for the eastern district of Pennsylvania, at the city of Philadelphia?

Question. Did you examine the model in the court-room?

Answer. I did.

Question. Was the model, when you saw it in the court-room, in the condition that it was when finished by you, or had any changes been made?

Answer. It was in the same condition; there was no alteration.

Question. Do you know of Mr. Woodworth having constructed at the dry dock one or more machines for planing, tongueing, and grooving boards and plank, or either, in addition to the machine which you have referred to as a model and the machine brought from Hudson?

Answer. I do know; I know that he constructed two machines, placing the cylinder horizontal; one cylinder was to rough off plank, passing under the other cylinder to be finished, tongued, and grooved; the pressure rollers were combined in both machines with the cylinders and side cutters; in one of the machines Woodworth contrived an endless chain, in connexion with the pressure rollers, to forward the plank; in the other machine the plank was forwarded by pressure and forwarding rollers.

Question. What was the motion of the plank, as it moved forward to be operated upon, relatively to the motion of the cylinder; did the cylinder move with or against the motion of the plank?

Answer. The motion of the plank was against the edge of the cutters on the cylinder; they moved in opposite directions; the same motion applied to the side cutters.

Question. Have you examined recently, or at any time, the planing machines in general use, known as Woodworth's planing machine?

Answer. I have from time to time, ever since 1828 to the present time.

Question. Are the machines in use at the present time different, or are they the same, in construction and mode of operation, as the construction and mode of operation of the machine built at Hudson and afterwards carried to the dry dock?

Answer. The combination is the same; the construction differs a little, so far as I have observed.

Question. State the difference of construction to which you refer.

Answer. When I allude to the difference in construction, I mean when they put a circular saw of several thicknesses combined, it amounts to a cutter wheel in the Woodworth invention; I have seen machines constructed according to Mr. Woodworth's plan and similar to the machine to which I have referred, in which several circular saws combined together were used instead of the cutter wheels; the difference is in form; I consider the effect the same.

Question. Is there any difference in the mode of construction and operation in the machine in use at the present time, known as Woodworth's machine, and the horizontal machines which were constructed by Woodworth at the dry dock herein before referred to?

Answer. There is no difference in the combination of rollers and cutter wheels; the operation is the same and the result is the same.

Question. State as near as you can recollect the time of the year and the year that you saw the horizontal machines referred to at the dry dock.

Answer. My impression is that it was about the latter part of November, or the first of December, 1828; that is as near as I can state now.

LOREN L. JOHNSON.

CHAS. F. HEAZLETT, *U. S. com'r.*

Sworn and subscribed before me this 18th day of April, A. D. 1851, at Philadelphia.

CHAS. F. HEAZLETT,
U. S. commissioner.

UNITED STATES,
Eastern district of Pennsylvania, sct.

Be it remembered that, on the eighteenth day of April, A. D. 1851, personally appeared at my office, State house in the city of Philadelphia, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States to take affidavits and acknowledgments of bail, &c., Jared Johnson, to testify and the truth to say, on the part and behalf of the plaintiff in certain suits or matters of controversy now depending and undetermined in the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, wherein Elisha Bloomer is the plaintiff, and McQuewan and Douglass are defendants. And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Question. What is your age, and where do you reside?

Answer. I am 49 years of age; I reside in Sheffield, Massachusetts.

Question. Are you related to Loren L. Johnson? If yea, state in what manner you are related.

Answer. I am related to Loren L. Johnson; he is a brother of mine.

Question. What is your business or profession?

Answer. I am a cabinet maker by trade, but more recently have turned my attention to mill-wrighting.

Question. How were you engaged in business in the year 1827 and 1828?

Answer. I was a journeyman at cabinet work until the latter part of June, 1828, with James Tompkins, of Hudson; after June, I can't say precisely the time, it must have been in August, I should think the latter part of August, I was employed on a machine for Mr. Woodworth, at Hudson.

Question. State what the machine you worked upon for Mr. Woodworth was intended to perform.

Answer. It was to reduce boards and planks to an equal width and thickness, and to tongue, and groove, and plane, at one and the same operation.

Question. Did you work upon said machine until it was finished, or otherwise?

Answer. I did work upon it until it was finished.

Question. State what part of the work on said machine was performed by you.

Answer. I was employed at the wood work.

Question. When you entered the employment of Mr. Woodworth, what was the condition or progress of said machine?

Answer. The machine was far in progress; the frame was put together ready to receive the machinery, as near as I can now recollect.

Question. Who had charge of the mechanical department in constructing the said machine for Woodworth?

Answer. William Woodworth. He conveyed to Loren L. Johnson his views, and he transmitted them to me generally.

Question. After the completion of Woodworth's machine at Hudson, did you see it operate, or any attempt made to operate said machine?

Answer. I saw it operate.

Question. What did you see performed by the machine in its operation?

Answer. There was a part of a board or plank planed and tongued, and grooved and reduced to an equal thickness, say some two or three feet.

Question. In what manner was the material in said machine operated; have you a sufficient knowledge of mechanics to state in detail the operation of said machine?

Answer. I think I have not sufficient knowledge to state in detail the operation of said machine; there was a planing cylinder and tongueing and grooving instruments which revolved, and performed the operation of planing and tongueing and grooving; the board was held in its place by means of pressure rollers; this is the best answer I can make to the question.

Question. Have you a knowledge that the said machine was removed from Hudson; if you have, say to where it was removed.

Answer. I know that said machine was removed from Hudson; it was removed to the dry dock, in New York; I found it there some two or three days after it left Hudson.

Question. Can you state the time of year by date, or otherwise, and the year that the machine left Hudson? If you can, state the time as near as you can recollect.

Answer. It left Hudson on the 12th of September, 1828.

Question. How do you know that the machine left Hudson on the 12th of September, 1828?

Answer. I have a memorandum to that effect made at the time, and which I now refer to for the purpose of determining the time.

Question. After the machine was removed to the dry dock, did you work upon it, or have any connexion with it? If you answer yes, state in what manner you were connected with the machine, and for how long a time.

Answer. After the machine was removed from Hudson to the dry dock, in the city of New York, I was there employed in building drums, pulleys, and making and cementing the belts; I was so employed until the 29th of October, 1828.

Question. During the time that you were so employed, did you see the machine in operation; and if you answer yes, say whether you saw it daily or otherwise.

Answer. I saw the machine in operation daily, up to the time that I left, the 29th of October, 1828.

Question. Do you consider yourself a judge of the operation which should be performed upon a board or plank when planed, to say whether the same is well done?

Answer. I am so well acquainted with mechanism as to know whether the work is well done or not.

Question. Was the work which you saw performed by the Woodworth machine at the dry dock well or illy executed?

Answer. It was a good operation; it was well done, the machine performed well.

Question. Can you state how long it was after the machine left Hudson before the machine was put in operation at the dry dock?

Answer. I cannot say precisely; I should think one or two weeks, perhaps nearly two.

JARED JOHNSON.

Chas. F. Heazlett,
U. S. Commissioner.

Sworn and subscribed before me this 18th day of April, A. D. 1851, at Philadelphia.

CHAS. F. HEAZLETT,
U. S. Commissioner.

United States,
Eastern district of Pennsylvania, sct.

Be it remembered, that on the eighteenth day of April, A. D. 1851, personally appeared at my office, State house, in city of Philadelphia, before me, Charles F. Heazlett, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., Edmund N. Morse, to testify, and the truth to say, on the part and behalf of the plaintiff, in certain suits or matters of controversy now depending and undetermined in the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, wherein Elisha Bloomer is the plaintiff, and McQuewan and Douglass are defendants.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Question. What is your age?

Answer. I am 57 *of* years of age.

Question. Where do you reside?

Answer. I now reside in Chelsea, Massachusetts, near Boston.

Question. What is your business?

Answer. I work at the business of building, hoisting wheels, cranes, derricks, &c., in connexion with ship-block making.

Question. Where did you reside during the years 1827 and 1828?

Answer. In 1827 I resided in Charlestown, Massachusetts, and in the same place up to 1st of July, 1828; on the 1st of July, 1828, I left Charlestown for Albany, N. Y.; I arrived there on the 4th or 5th of the same month; I stopped one night; the next morning I left Albany for the city of Hudson, N. Y., in the steamboat North America.

Question. How long did you remain at Hudson?

Answer. I remained at Hudson until the 8th of the same month, (July,) when I went from Hudson to the block factory, some seven miles below Hudson, in company with Robert Le Roy Livingston and William Woodworth.

Question. Can you say how William Woodworth was employed at the time that you went in his company to the block factory?

Answer. On first seeing Mr. Woodworth I was introduced to him by Col. Livingston as one of the company of the "Livingston block factory;" Woodworth was employed at that time particularly on what was termed a jig saw, to give shape to block sides for ship plank blocks.

Question. Have you any knowledge of Mr. Woodworth having invented a machine for dressing flooring boards or plank?

Answer. Shortly after my taking charge of the factory I asked Wm. Woodworth why he was not more with us at the block factory; he told me he was building a machine for planing, tongueing, and grooving flooring boards at one operation.

Question. Did he inform you where he was building said machine?

Answer. He did; he told me he was building it at Dunbar's shop, near Col. Livingston's, in the city of Hudson.

Question. Do you know of your own knowledge that he was building a machine in Hudson?

Answer. I do.

Question. State what you know of his (W.) building a machine at Hudson for the purpose named, and the time, as near as you can recollect, when you personally knew the fact.

Answer. I was frequently in Hudson on matters connected with the business of the factory, when I took every opportunity that I could conveniently, to go into Dunbar's shop and see this machine while in the process of being built; my first personal knowledge was probably about the middle of the month of July, 1828.

Question. Did you see said machine after it was completed in the shop of Dunbar?

Answer. I did not.

Question. Did you see said machine after it was completed at any other place than Dunbar's shop?

Answer. I did; I saw it at the dry dock in the city of New York.

Question. Can you state the month and the year in which you saw it at the dry dock in the city of New York.

Answer. I saw the machine in operation at the dry dock in the latter part of November or beginning of December, 1828; I don't recollect the precise day; it was about that time.

Question. Did you see the machine operate?

Answer. I did.

Question. Was the work performed by the machine when you saw it in operation well done, or otherwise?

Answer. I have seen more lumber planed since, in the same space of time, on the Woodworth machine, but I have never seen soft or white pine lumber planed any better; I therefore answer that the work was well done.

Question. Do you recollect whether the machine which you saw at the dry dock in 1828, was operated vertically or horizontally, that is, whether the cylinder which planed the material was vertical or horizontal?

Answer. The cylinder was in a vertical position.

Question. Are you acquainted with the machines in general use at the present time, called or known as the Woodworth machine for dressing lumber?

Answer. I am.

Question. Have you seen said machines operate?

Answer. I have frequently.

Question. Did you see at the dry dock in the city of New York, at any time during the year 1828, one or more machines or any machinery which was used, or intended to be used for dressing lumber, beside the vertical machine to which you have referred?

Answer. I did; I saw two frames on the same floor where the vertical machine was in operation, which Mr. Woodworth told me were intended to be used with a horizontal cylinder; I also saw at the time above stated, when I was at the dry dock in the same building, where the vertical machine was in operation, quite a lot of castings, &c., in a rough state lying upon the floor; I made inquiry of Mr. Woodworth, what they were intended for; by his manner it appeared to me he was indifferent about telling me what they were for, but subsequently told me that they were intended for the star gearing, &c., of the horizontal machines.

Question. When you use the words "star gearing" will you state what you intend thereby?

Answer. I mean to be understood that it is a cog or gear wheel of a peculiar construction, intended to be used in the application of pressure to prevent the pressure rollers from being thrown out of gear.

Question. Have the Woodworth machines in use at the present time "star gearing" such as you have spoken of?

Answer. Those of recent construction have not; there is a different arrangement adopted, whereby the same result is produced.

Question. State if you please more concisely, what difference there is between the "star gearing" in use at the present time and that which you saw in 1828, at the time you had the conversation with Woodworth above referred to.

Answer. Where "star gearing" is made use of at the present time, it is precisely of the same construction as that which I saw at the time I have referred to.

Question. Will you explain what you mean when you say "that the Woodworth machines of recent construction have not star gearing, that a different arrangement is adopted," stating whether any alteration which may be made in the construction of planing machines at the present time is not a matter of form more than of substance.

Answer. I believe that in some machines that are now built the gearing connected with the feed and pressure rollers is called the triple gear, though in its operation not changing the method shown by Woodworth.

Question. From your knowledge of Woodworth's machine which you saw at the dry dock in 1828, and the machines in use at the present time, known as Woodworth's machines, is there any difference in the mode of operation and the general result produced upon a board or plank dressed therein?

Answer. As I have stated before the position of the cylinder, and I will add the pressure rollers were vertical; in the present mode of operation, the cylinder with the feed and pressure rollers are placed horizontally, but the mode of operation, and the general result produced upon a board or plank, is the same.

E. K. MORSE.

Sworn and subscribed this 18th day of April, A. D. 1851, at Philadelphia, before me.

CHAS. F. HEAZLETT.
U. S. commissioner.

UNITED STATES,
Eastern district of Pennsylvania.

I, Charles F. Heazlett, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under and by virtue of the acts of Congress, do hereby certify, that the reason for taking the foregoing deposition, and the fact is, that the witnesses, Loring L. Johnson, Jared Johnson, and Edmund N. Morse, reside at a greater distance than one hundred miles from the place where the trial of said cause is to be held, to wit, the said Loring L. Johnson in West Chester county, N. Y., the said Jared Johnson in Sheffield, Massachusetts, and E. N. Morse in Chelsea, Massachusetts.

I further certify, that a notification of the time and place of taking said deposition was made out and served upon the attorney for the said defendants, a copy of which is hereto annexed.

I further certify, that on the eighteenth day of April, A. D. 1851, I was attended by George G. Sickles, esq., of counsel, with the said plaintiff, and by the witness, who were of sound mind and lawful age, and the witness having been by me carefully examined, and cautioned, and severally sworn, to testify the whole truth, their several depositions were by me reduced to writing in the presence of the witnesses who subscribed the same in my presence; and I have retained the said depositions in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal, this eighteenth day of April, A. D. 1851.

CHAS. F. HEAZLETT, [SEAL.]
U. S. Commissioner.

Com. fees - - - - - -	$15 00
Certificate - - - - - -	1 25
3 witnesses - - - - - -	3 75
Sub. serve - - - - - -	1 50

UNITED STATES, *eastern district of Pennsylvania.*

I, George Plitt, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify, that I am well acquainted with the handwriting of Charles F. Heazlett, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting.

And I do further certify, that he was, at the time of signing the same, and still is, a commissioner of the said circuit court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of these United States the seventy-fifth.

[Seal of the circuit court, eastern district of Penn'a.]

GEORGE PLITT,
Clerk of C. C.

ELISHA BLOOMER
vs.
MCQUEWAN & DOUGLASS.
No. , of November term, 1850.

To the defendants above named, or James Dunlop, esquire, their attorney.

You will please take notice, that the deposition of witnesses, to be read in evidence on the trial of the above cases, will be taken before

Charles F. Heazlett, United States commissioner, at his office, in the city of Philadelphia, Pennsylvania, on Friday the 18th, and Saturday the 19th, day of April inst., during office hours.

SHALER & STANTON,
Attorneys for plaintiffs.

April 15th, 1851.

CITY OF PITTSBURG, *ss.*

Personally appeared before me C. W. Robb, who upon his oath says he served a copy of the within notice on James Dunlop, esq., on the 15th day of April, 1851.

C. W. ROBB.

Sworn and subscribed before me, the 19th April, 1851.

N. BUCKMASTER, *Ald.*

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct.

I, George Plitt, clerk of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, do hereby [SEAL.] certify, that I am well acquainted with the handwriting of Charles F. Heazlett, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is his proper handwriting; and I do further certify, that he was, at the time of signing the same, and still is, a commissioner of said circuit court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this tenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-fifth.

GEORGE PLITT,
Clerk of C. C.

UNITED STATES,
Eastern district of Pennsylvania, ss.

Be it remembered, that on the tenth day of May, A. D. 1851, personally appeared at my office, State house, in the city of Philadelphia, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., William Hamilton, to testify and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States, for the western district of Pennsylvania, in the third circuit, wherein Elisha Bloomer is the plaintiff, and John McQuewan, Allen B. McQuewan, and Samuel Douglass, are defendants; and the said witness being of lawful age, and having been by me first cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Question. What is your age, and where do you reside?

Answer. I am sixty years of age, and reside in the city of Philadelphia.

Question. Please state whether or not you are connected with the Franklin Institute of the State of Pennsylvania; and if so, in what capacity, and for how long?

Answer. I am connected with the Franklin Institute; I am actuary of the Institute, and have been so for twenty-three years; that is, from March, 1828.

Question. Look at model marked A, and state whether or not this model has ever been in the possession of the Institute; and if so, for how long a time; and state the circumstances under which it came into the possession of [the] Institute.

Answer. I have examined the model; it has been in the possession of the Institute; in September, 1829, Mr. William Woodworth submitted his invention to the committee on inventions appointed by the Institute, asking their opinions; he submitted at the same time a working model, which I believe to be the same now produced, marked A; this model has been in the Institute ever since; I have no recollection of having seen any other.

Question. Have you any record or minutes showing the transactions of the Institute of the date you have mentioned?

Answer. I have a record, and now produce the minutes of the committee on inventions; on page 19 of that book I find the following entry: September 12th, 1829, meeting of the committee held this date; present, Messrs. Merrick, Tyler, Baldwin, Reeves, Johnston; Mr. S. V. Merrick, chairman, (No. 24;) Mr. William Woodworth, of the city of New York, submitted for the examination of a committee the model of a machine for planing, tongueing, and grooving flooring and other boards. WILLM. HAMILTON.

Taken, affirmed, and subscribed before me, this 10th day of May, 1851, at Philadelphia.

CHAS. F. HEAZLITT,
U. S. Commissioner.

UNITED STATES,
Eastern district of Pennsylvania.

I, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, under and by virtue of the acts of Congress, do hereby certify, that the reason for taking the foregoing deposition, and the fact is, that the witness, William Hamilton, resides at a greater distance than one hundred miles from the place where the trial of said cause is to be held, to wit, in the city of Philadelphia.

I further certify, that a notification of the time and place of taking said deposition was made out and served upon the counsel of the defendants; said notice is hereto annexed.

I further certify, that on the 10th day of May, A. D. 1851, at 12 o'clock, m., I was attended by George Harding, esquire, of counsel, with the said plaintiff, and by the witness, who was of sound mind and lawful age, and the witness having been by me carefully examined, and cautioned, and affirmed to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of said cause.

In testimony whereof I have subscribed my name and affixed my seal, this tenth day of May, A. D. 1851, at Philadelphia.

CHAS. F. HEAZLITT, [SEAL.]
U. S. Commissioner.

ELISHA BLOOMER
vs.
McQUEWAN and Douglass.
} No. 7, November term, 1851.

In equity.

To the defendants above named, or James Dunlop, esq., their attorney.

You will please take notice, that the depositions of witnesses to be read in evidence on the trial of the above cause will be taken as follows, at Baltimore, Maryland, before Levin Gale, commissioner, at his office, on Wednesday, 23d April, A. D. 1851, at 12 o'clock.

SHALER & STANTON,
Pittsburg, 19th April, 1851. *Attorneys for plaintiff.*

UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that before me, Levin Gale, a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, personally appeared at my office, in the city of Baltimore, within the district of Maryland aforesaid, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one, Peter Foy, Thomas Stewart, and John Bates; and on the 24th day of the same month, in the same year, Nicholas La Barre, severally, witnesses for the plaintiff in certain civil causes depending in the circuit court of the United States, for the western district of Pennsylvania, in the third circuit, that is to say, in a certain cause wherein Elisha Bloomer is the plaintiff, and McQuewan and Douglass are the defendants.

And the said Peter Foy, Thomas Stewart, and John Bates, and Nicholas La Barre, having been by me first severally examined, and cautioned, and duly sworn according to law, to testify the whole truth, they did severally make oath, depose, and say, as follows, that is to say:

Peter Foy having been duly sworn according to law, and being examined on the part of the plaintiff, makes oath, deposes, and answers, as follows:

Question. What is your age?

A. I will be seventy-one years of age in August next.

Q. Where do you reside?

A. No. 204, Centre avenue, in the city of Baltimore.

Q. What is your business or profession?

A. I am a house carpenter and ship joiner by profession.

Q. How long have you been a resident of the city of Baltimore?

A. Since my birth; I am a native of Baltimore.

Q. *Where* you, at any period heretofore, connected with the health department of the city of Baltimore? If you answer yes, state what position you held when you were appointed, and for how long a time you continued in said health department.

A. I was a commissioner of health for twenty-one years; I was appointed the 29th day of February, 1820, and continued to hold said appointment until the 1st day of March, 1841.

Q. Have you a recollection of a mahogany saw mill and premises, which formerly were in use in the city of Baltimore, in the neighborhood of what was then called Apple alley and Lombard street; if you have, will you state where the mill was situate, mentioning the names of the streets, and the time when?

A. I have such recollection; it stood on the west side of the street now called Bethel street, formerly called Apple alley, a little to the north of Lombard street; I knew it previous to my appointment.

Q. Was your attention at any time called to the said premises as a conservator of the public health? If yea, state the time when, and the facts and circumstances connected with said mill.

A. My attention was called to it in 1820; I don't exactly recollect the month or week; it was early in the year 1820. My attention was particularly called to it, because the premises were in a state of dilapidation, and free ingress and egress to bad and mischievous boys was offered, and the danger of falling into an old uncovered well that was there. Mr. McKim and I used to quarrel frequently about the removal of the nuisance; the premises were occupied at that time.

Q. Describe, as near as you can recollect, the general appearance of the premises, when your attention was first called thereto as health commissioner.

A. It was in a state of nuisance, unoccupied, as I have described before; the well was open, and free ingress and egress to bad boys. It was in a dreadful state of nuisance, and of course it was my duty to have it removed; and I called on John McKim, junior, as the owner, or agent of the owner, and I induced him, after some time, to have something done with it; he had the well either covered over or filled up.

Q. Were you, at any time of your life, connected with the fire department of the city of Baltimore?

A. Yes, indeed, for many years, to my sorrow.

Q. When first, as near as you can recollect, and how long did you continue?

A. I first became [an] active fireman in raising the Columbia fire company, in 1805, then the Franklin, in 1809, and continued a fireman until I could go no longer; it was four or five years since I resigned the presidency of the Franklin company.

Q. Between the years 1816 and the present time, have you a recollection of any fire or fires having occurred within the city of Baltimore, at the place, or in [the] neighborhood where the said mahogany saw mill formerly stood? If you have such recollection, state the facts and circumstances connected therewith, and the time when.

A. There was a fire at the opposite corner, at the northeast corner of Apple alley and Smith street, as it was then called, now Lombard street. It was before I was appointed health commissioner, but I can't recollect the year; it was after 1809; might have been in 1812 or 1813. There was no other fire in that neighborhood, except one on the west side of Bond street, at an old chair factory. There was no fire, from my earliest recollection to the present time, in the square where the mahogany saw mill stood.

Q. If a fire had occurred on the premises where the mahogany saw mill stood, between the year 1816 and the time that your attention was called to it in 1820, is it or not probable that you would have known of said fire?

A. I think it is more than probable I should, for I was very attentive to the fire department, and the smallest alarm of fire would call me out.

PETER FOY.

Sworn to and subscribed by Peter Foy, this 23d April, 1851, before
LEVIN GALE, *Comm'r.*

Thomas Stewart, having been duly sworn according to law, and being examined on the part of the plaintiff, makes oath, deposes, and answers, as follows:

Q. What is your age?

A. I was forty-eight years of age on the seventh of last January.

Q. Where do you reside?

A. At No. 13, east Fayette street, in the city of Baltimore.

Q. In what profession or business are you engaged or employed?

A. Dentist.

Q. Between the years 1816 and 1824 where did you reside?

2345.

A. In Lombard street, formerly called *Seventh* street, between Bond street and Apple alley, in the city of Baltimore, I resided from 1816 until 1818 or 1819, I can't exactly say which; after that time I was in the upper part of the city of Baltimore until 1822, and, from 1822 to 1824, I was in Virginia; I returned to Baltimore then.

Q. What was the christian name of your father?

A. Adam.

Q. Was your father, after the year 1816, engaged in business in the city of Baltimore; if yea, in what business, and where in said city?

A. He was engaged in sawing mahogany veneers and boards for cabinet makers, north of Lombard street, formerly called Smith street, and west of Apple alley, now called Bethel street. I think this was after the year 1816, and until about 1818 or 1819. The above place is in the city of Baltimore.

Q. Was any person, or were any persons interested, either as partners, or otherwise, with your father in sawing mahogany? If yea, state who.

A. Mr. George Hill was the first person I knew to be in partnership with my father. There was likewise a Captain McComb or McCombs, that appeared to have an interest in the mill, for he was often there giving directions.

Q. Who were employed as workmen in said mills?

A. There was my father, Mr. Levi Williams, and Nicholas La Barre, my brother Adam, and myself.

Q. What duties were performed in the mill by your father?

A. My father superintended putting up all the machinery belonging to the saws, and afterwards attended to the saw; and saw that it was kept in good order, and attended to properly.

Q. What duties were performed by Mr. Williams, in and about the mill?

A. He did the carpenter's work.

Q. What duties were performed by Nicholas La Barre?

A. His duty was to attend to the engine, boiler, and the fire.

Q. How was your brother Adam employed?

A. My brother Adam and I attended to the saws while in use.

Q. How long was the business of sawing continued at said mill?

A. I think until 1818, or somewhere thereabouts.

Q. Why was the business discontinued?

A. In consequence of my father and Mr. Hill getting into difficulty with the Mechanics' Bank of Baltimore, in which Mr. Hill was a clerk at that time.

Q. Did your father and Mr. Hill conduct business in said city at any other place than at the mill you have mentioned?

A. No.

Q. Will you describe the mill buildings?

A. Yes; the mill building was of brick, one story high, and a shed roof; it stood between a frame building that now stands on Apple alley and a brick building that stands near the centre of the lot; which brick building had three windows facing the north. The brick building is now there; the mill is not. The mill was covered with a shingle roof. and had two or three sky lights in the roof to give light to the mill. There was a small portion of roof that extended over the carriage way to the west end, that was covered with tin. There was but one window in the mill, that I can recollect of; that was on the north side, near the circular saw, intended to show as light when sharpening the same. There was a tall chimney in the southwest corner of the mill that carried off the smoke; there was an alley way that went from Apple alley, or Bethel street, to the furnace doors of the boiler, for the purpose of fetching in fuel; the alley way is still there.

Question. Can you produce a sketch of the mill building; and if you can, will you produce such sketch?

Answer. Yes, I can and will; I now produce it.

The witness here produces the paper herewith returned, marked "Exhibit T. S., No. 1," upon which the witness and the commissioner now place their names.

Question. Will you explain said sketch, marking with letters the various figures thereon?

Answer. I will: (a) is the frame building on Apple alley; (b) is the brick building, now standing, with the three windows herein before referred to; (c) is the main body of the mill, built of brick; (d) is the east edge of the carriage way, that extended beyond the mill; (e) is the west end of the carriage way, which likewise extended beyond the main body of the mill; (f) is the dotted lines, signifying the carriage way; (g) is the chimney of the boiler; (h) is the sky-lights, that show light to the mill; (i) is the small window in the north side of the mill, at which the saw was sharpened; (j) is the inclined plane, where logs were brought into the mill; (k) (k) are the *are the* doors at each end of the carriage way. This describes all the building, with the exception of a brick wall around the yard.

Question. Will you state, as fully as you can, the machines and machinery which were in said mill, while the same was in operation, under the direction of your father and Mr. Hill, and during all the time that said mill was in operation.

Answer. There was a steam engine in the mill. It was built as a six-horse power engine, and was a low-pressure engine, on Bolton and Wells' old plan. There was a boiler to furnish steam to drive the engine. There was an upright saw that stood in the northeast corner of the mill, and circular saw in the northwest corner of the mill. There were pullies and gearing to run the carriage backwards and forwards. The upright saw was driven by a crank and pinion from a pit below the saw. The circular saw was driven from a pulley or wheel on the main shaft of the engines. Both of the saws could not be driven at the same time; first, because the engine was not strong enough; and, secondly, because both saws were fed by the same carriage. This was all the machinery in the mill whilst I attended to it.

Question. You have said that there was a two-story brick building connected with the mill; for what purpose was said building used?

Answer. As a work shop. Piano fortes were made in it before the mill was built; it was afterwards used to make saws and patterns for the mill.

Question. Can you produce a sketch, showing the machines and machinery in said mill; if you can, will you produce the same?

Answer. I can, and the sketch now produced shows the machines and machinery in said mill.

The witness here produces the paper herewith returned, marked "Exhibit T. S., No. 2," upon which the witness and the commissioner now place their names.

Question. Will you mark the letters, and describe in words what you intend the several figures on said exhibit shall represent?

Answer. I will: (l) is the boiler; (m) is the engine; (n) is the fly-wheel; (o) is the driving wheel; (p) is the upright saw; (q) is the circular saw; (r r r) is the carriage way; (s) is the chimney; (t) is the centre of the mill; (u) is the brick workshop, with three windows in the second story, facing to the north; (v) is the entrance from the dwelling on Lombard street, where my father resides; (w) the door into the mill; (x) the frame house, now standing on Apple alley; (y) is the three feet alley, running from Apple alley into the mill in front of the boiler; (z) the door; (aa) is the small window which gave light to sharpen the saws, as before mentioned. The foregoing is a description of all the machinery on the premises whilst I was there, except the machinery for driving the carriage backwards and forwards, which I could not represent.

Question. What was the length of the shafting connected with the engine?

Answer. I should think it was somewhere about six or eight feet.

Question. Was there more than one shaft?

Answer. There was the shaft of the circular, and a small shaft with a crank on it in the pit below, for the purpose of driving the upright saw. These two saws were both driven by straps from the main driving wheel, and only one could be driven at one time.

Question. Why could only one be driven at the same time?

Answer. For two reasons; first, that two straps could not be put on the same wheel at the same time; and, secondly, the carriage could not be worked both ways at once.

Question. Were the operations at said mill conducted openly or secretly?

Answer. There was "no admittance" written on different parts of the mill, but it was very seldom that any person was stopped from coming in. Sometimes there were seven, eight, or nine persons in the mill at a time; strangers, who were there through curiosity. No admittance was only intended to keep out persons who might loiter there, and stand in our way.

Question. After the difficulty with the Mechanics' Bank, referred to by you in your former answer, did your father continue at the mill, or did he leave?

Answer. He left the mill, and also left the city of Baltimore; he applied for the benefit of the insolvent laws before he left the city of Baltimore, and did not return until he had to appear before the commissioner of insolvent debtors.

Question. After your father left the mill, was any business continued there to your knowledge?

Answer. None, with the exception of a trial to work a belt saw that did not succeed; the mill was then closed, and nothing more done in it; this was, I think, somewhere about 1818 or 1819, about six months after we left the mill.

Question. Have you at any time witnessed the operation of planing, tongueing, and grooving plank or boards by machinery? If yea, state where you first saw the same, and the time where, as near as you can recollect.

Answer. Yes, I have; I remember a mill at the corner of Lombard and Green streets, opposite the Medical College, where they planed, tongued, and grooved flooring boards; I went to see it when in operation; it was a great curiosity to me, having never seen any thing of the kind before; I think it was in 1831 that I saw the mill in operation; it was burned down accidentally in 1832, I think, or in 1833.

Question. How long did you work at the mill of Stewart and Hill?

Answer. I lived at the dwelling house in Lombard street before the mill was built; was at the mill all the time it was building; worked in the mill; helped to make the saws, and attended to the same until the mill was stopped, that is to say, when my father and Mr. Hill got into difficulty with the bank, for they attempted to go on afterwards, but did not succeed with the belt saws, as I have herein before mentioned.

Question. Is your father living or deceased?

Answer. He is dead; he died about ten years ago.

Question. Is your brother Adam living or dead?

Answer. He is dead; he died about the year 1821.

THOMAS STEWART.

Sworn to and subscribed by Thomas Stewart, this 23d April, 1851, before LEVIN GALE, *Com'r.*

John Bates having been duly sworn according to law, and being examined on the part of the plaintiff, makes oath, deposes, and answers as follows:

Question. What is your age?

Answer. I will be seventy-one years of age on the 25th day of August next.

Question. Where do you reside?

Answer. In East Lombard street, on the north side, seventy-four feet one inch from Broadway.

Question. What is your business or profession?

Answer. I am a bricklayer by trade, and now live on the income from my property; I don't now work at my trade.

Question. Where did you reside in the year 1821?

Answer. In Baltimore.

Question. In what part of Baltimore did you reside at that time?

Answer. At the corner of Lombard street and Strawberry alley, and lived there from that time until about five years ago, when I removed to my present place of residence.

Question. Have you knowledge of the location or place where a mahogany saw-mill formerly stood, in the neighborhood of *of* Lombard street and a street formerly known as Apple alley? If you answer yes, state the location and place where said mill stood, bounding it by streets.

Answer. I have; when I first came down from Pennsylvania I saw the boiler and some of the wheels and machinery, and a cart load or two of mahogany saw dust; I came from Pennsylvania in 1821; this place was about one hundred feet from Smith street, as it was called then, now Lombard street, to the north; it bounded on Apple alley, as it was then called, now Bethel street, and the lot ran through to Bond street.

Question. Do you recollect who were the owners of the said mill? If you do, state the name of the owners.

Answer. I bought the fence from McCombs; he said that when he came home from sea, during the war, Hill and Stewart had said to him that, if he would come in with them, he might do so, and that he put eighteen hundred dollars in the concern, and got nothing for it; he had got the lot by escheating it; I never knew Stewart or Hill; what I have stated was told me by McCombs.

Question. In your last answer you say you bought the fence; what fence did you purchase?

Answer. A brick fence, which was on three sides of this lot, I bought from McCombs; it was about five feet high.

Question. At the time you purchased the brick, was any part of the saw-mill buildings, in which the machinery for sawing had been erected, standing on said premises?

Answer. There was a shed of frame which they used to use for a carpenters' shop, and a blue frame building on Apple alley, which is there now, and a brick building which is still standing back of that; there was no machinery except the boiler, which was laying out on the grass, and some old wheels.

Question. After you purchased the fence, did you permit the brick to remain on the premises, or did you carry the brick away?

Answer. I hauled them away, and made use of them to repair my house.

Question. Since the year 1821, have you had a knowledge of said mill premises up to this time?

Answer. Yes.

Question. What distance is it from said mill premises to your former residence, at the corner of Strawberry alley and Lombard street?

Answer. Pretty near two hundred feet.

Question. What distance is it from said mill premises to your present place of residence?

Answer. About one hundred and thirty feet.

Question. Since the year 1821, has any machine, or machines of any kind, been in use or operation upon the premises, known as the mill lot, referred to?

Answer. There has been nothing; I took away the fence, and there has been nothing there since.

Question. Have you any recollection whether or not a fire occurred on the block of ground, where said mill lot is situate, since the year 1821?

Answer. Not that I know, I never heard of any; if a fire had occurred on that block of ground I should have known of it, and seen it.

JOHN BATES.

Sworn to and subscribed by John Bates this 23d day April, 1851, before

LEVIN GALE,
Commissioner.

At the request of the plaintiff the further taking of depositions was adjourned until to-morrow morning at 8½ o'clock, a. m. And on this twenty-fourth day of April, eighteen hundred and fifty-one, at my office in the city of Baltimore, at 8½ o'clock, a. m., the further taking of depositions was continued, and Nicholas La Barre having been duly sworn according to law, and being examined on the part of the plaintiff, makes oath, deposes, and answers as follows:

Question. What is your age?

Answer. I will be fifty-nine in June next.

Question. What is your business or occupation?

Answer. I run steam engines and follow steam work.

Question. Where do you reside?

Answer. At No. 7, Spring court, in the city of Baltimore.

Question. At any time heretofore were you acquainted with a person named Adam Stewart; if yea, where did you know him, and when?

Answer. I was acquainted with Adam Stewart here in Baltimore, and went to work with him somewhere about the year 1817.

Question. What work was Stewart engaged in when you went to work for him?

Answer. He was engaged in a mahogany saw-mill.

Question. Where?

Answer. It was between Bond street and Apple alley, and between York street, as it was then called, now called Baltimore street, and Lombard street.

Question. Was any person interested in business with Stewart at said mill?

Answer. He had a partner named George Hill.

Question. What machine and machinery were in use and operation in said mill? Mention all the machinery that was in said mill while you worked there.

Answer. There was an upright saw, a six feet circular saw, another circular saw from eighteen inches to two feet in diameter; that was all the machinery that was in the mill, with the exception of a small lathe to do small work on.

Question. How was the machinery driven; by what power?

Answer. It was driven by a six-horse low-pressure engine.

Question. Do you recollect the names of the persons who worked in the mill; if you do, will you mention particularly the name of each person?

Answer. I will mention as many as I know; there were one or two carpenters that worked there whose names I don't know, or don't recollect; but the last carpenter that worked in the mill was Williams. There was also at work there myself, Thomas Stewart, Adam Stewart, sr., Adam Stewart, jr., father and son; occasionally Mr. Hill used to be there and do little jobs, but he never did any work of any consequence.

The above were the persons who worked regularly in the mill.

Question. What was your business in the mill?

Answer. My business was to attend to the engine, and do mill work, and every thing I could about the mill.

Question. What was the duty of Adam Stewart, jr.?

Answer. He, with his brother Thomas, attended to the saws, and sharpened and filed up the saws, and so forth.

Question. What duties were performed about the mill by Adam Stewart, sr., the father?

Answer. He did very little himself, unless some accident or breakage occurred; but as to sawing, the logs attended to it themselves.

Question. For what purpose was the upright saw used?

Answer. It was used for sawing boards of different thicknesses, scantling, &c.

Question. For what purpose was the circular saw used?

Answer. The circular saw was used for sawing veneers, or any thing below a quarter of an inch or three-eighths in thickness.

Question. When the mill was in operation were the circular saw and upright saw in use at one and the same time?

Answer. No; they could not both be used at the same time.

Question. Why not?

Answer. The engine was not powerful enough to drive them both; it could scarcely drive one.

Question. In what way was the stuff forwarded to the upright saw?

Answer. It was forwarded on a carriage.

Question. In what way was the stuff forwarded to the circular saw?

Answer. It was also forwarded on a carriage, not the same carriage.

Question. What length of shafting was in the mill connected with the engine to operate the saw?

A. The length of the fly wheel shaft was about six or seven feet; the saws were driven by a drum from the fly-wheel shaft to the pitman shaft; there was but one shaft to the engine.

Q. Do you know who built the engine that was used in said saw mill?

A. George Coxson built the engine. He carried on a machine shop in North street, in the city of Baltimore, just opposite the Cathedral.

Q. How long did you work for Stewart & Hill?

A. Somewhere about two years, or rather more; I can't tell exactly.

Q. Why did you quit their employ?

A. They failed, and had no further use for my services.

Q. In what year did they fail?

A. I think it was in 1818.

Q. After the failure of Stewart & Hill, did they continue business, or otherwise?

A. No, they suspended all business in that line; they did nothing.

Q. After the failure of Stewart & Hill, do you know what was done with the engine?

A. I[t] got into the hands of Joseph Shears.

Q. How long after the failure?

A. I saw it at Shears' about a year afterwards.

Q. Where did Shears, at the time you saw the engine, conduct business?

A. He carried on a brass foundry on the point.

Q. After the time that you saw the engine at Shears did you again see it, and where?

Q. I saw it at Watchman & Broth's establishment, in the city of Baltimore, in the year 1820, or somewhere thereabouts. It came there to be repaired. It was at Watchman & Broth's a great while, some year or two, or more. Then it was brought by the proprietors of the Maryland chemical works, and put up in their factory.

Q. During the time that Stewart & Hill conducted business, was the machinery in use in full view of the engine, and could you, as engineer and workman, see all the operations that were carried on in said mill?

A. It was all on one floor, with the exception of the carriage way, being a few steps higher than the floor, which the engine stood on; I could see every thing; it was all plain and open to my view.

Q. Are you positive that there was no other machine or machinery in said mill except that which you have mentioned?

A. None other, I am positive.

Q. During the time Stewart & Hill conducted business, did you know of or see about their establishment a man who was called by the name of Robert Wolcott?

A. I did not; I did not know such a person.

N. LA BARRE.

Sworn to and subscribed by Nicholas La Barre, this 24th April, 51, before LEVIN GALE, *Com'r.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Levin Gale, a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," do hereby certify, that the reason for taking the aforesaid depositions of Peter Foy, Thomas Stewart, John Bates, and Nicholas La Barre, was that the said witnesses reside in the city of Baltimore, and at a greater distance than one hundred miles from the place of the trial of the aforesaid cause. And I do also certify, that the notice herewith returned was produced to me before the taking of the said depositions, and that the plaintiff in said causes attended by counsel at the taking of the foregoing depositions, but none of the defendants, nor any attorney, counsel, or agent of theirs, attended at the taking of the same.

And I do further certify, that I am not of counsel or attorney for either of the parties, nor interested in the event of the causes, or of any of them; and that the said several deponents were first carefully examined, and cautioned, and duly sworn, according to law, to testify the whole truth, and that said depositions were then reduced to writing by me, and thereafter subscribed by the several deponents in my presence. And I do also certify, that I have retained the said depositions, and the exhibits annexed, in my presence and custody to be sealed up, and directed to the court for which they were taken.

Given under my hand and seal, at the city of Baltimore, in the district of Maryland, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

LEVIN GALE. [SEAL.]

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Thomas Spicer, clerk of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, do hereby certify, that Levin Gale, esq., before whom the foregoing depositions appear to have been taken, was at the time of taking the same, and now is, a commissioner duly appointed by the said circuit court, in pursuance of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States;" and to all his acts as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

[L. S.] In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

THO. SPICER,
Clerk circuit court.

In equity.

Elisha Bloomer, esq., vs. William Dilworth.	No. 5,	November term,	1850.
Same vs. McQuewans and Douglass.	No. 7.	do.	do.
Same vs. Mason, Ross, and Bunting.	No. 17.	do.	do.
Same vs. James Millinger.	No. 16.	do.	do.
Same vs. A. & Jas. D. Kelly.	No. 18.	do.	do.
Same vs. George Draher.	No. 27.	do.	do.
Same vs. Robert and Jas. Hill.	No. 28.	do.	do.

To defendants above named, or James Dunlop, esq., their attorney.

You will please take notice, that the deposition of witnesses to be read in evidence on part of plaintiff in the trial of the above causes, will be taken before John W. Nelson, esq., commissioner, at his office, city of New York, on Monday, 28th April, A. D. 1851, at twelve o'clock.

SHALER & STANTON,
Attorneys pro querenti, 21*st April*, 1851.

Plaintiff appeared, and in consequence of illness of witness, adjourned to 29th, at 12 m., on motion of plaintiff's counsel.

UNITED STATES OF AMERICA,
Southern district of New York,
City, county, and State of New York, ss.

Be it remembered, that on the 28th, 29th, and 30th days of April, in the year of our Lord one thousand eight hundred and fifty-one, I, John W. Nelson, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an 'act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States courts in the city of New York, in the said southern district of New York, in the State aforesaid, James E. Serrell, to testify and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the western district of Pennsylvania, in the several suits named in the notice hereto annexed.

And the said James E. Serrell being about the age of thirty-one years, and having been by me first cautioned and sworn to testify the truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James E. Serrell, and he did thereupon depose, testify, and say as follows, viz:

Question. What is your age and where do you reside?

Answer. My age is thirty-one, and I reside at No. 43 west 26th st., in the city of New York.

Question. What is your business or profession?

Answer. I am a civil engineer, and have been acquainted with mechanical engineering and the construction of machinery for the last fifteen years.

Question. Are you acquainted with the patent heretofore granted to William Woodworth for a machine for planing, and tongueing, and grooving boards and plank, issued the 27th day of December, 1828?

Answer. I am.

Question. Will you state the construction and mode of operation of said machine?

Answer. The patent referred to describes two operations by two machines, the first machine being to reduce the plank to a width by the use of circular saws, being a mere appendage to the other operation. The second operation (planing) is described in the specification, and shown on the drawing attached to the patent as being performed in the following manner, viz:

The board, previously reduced to a width, is placed on a bed or carriage, and held firmly in place by the action of pressure rollers, which operate to assist the progress of the board in a forward direction to the knives or cutters, for the purpose of planing the surface of the board; the peculiarity of the knives or cutters being first in their construction, and second in their mode of operation; the knives or cutting edges being attached to lags or proportions or disks, by which a free passage of the shavings from the knife is allowed to pass, and the cutting operation is underneath the surface of the board, the motion of the cylinder being in an opposite direction to the motion of the board; a peculiarity not found in any other planing machine previous to this time, that is, previous to the invention of Woodworth, and is of eminent advantage in the operation of planing, as the quantity of matter always found on the surface of a board is thrown off by the upper action of the cut, before the cutting edges arrive at the part undisturbed by the former cut, by which the knife is always cutting in clear stuff, free of grit. The further progress of the board brings it in contact with the tongueing and grooving cutters which operate on the edges, one cutter forming the tongue and the other forming the groove; in its further progress it is held down and steadied by a secured pressure roller, which assists in delivering the finished board or plank, which is now reduced to an equal width and thickness, and ready for use.

Question. Are you acquainted with the reissued patent granted to William W. Woodworth, as the administrator of William Woodworth, deceased, dated the 8th day of July, 1845?

Answer. I am.

Question. Is the said reissued patent for the same invention as the patent of December 27th, 1828, or if there be any difference in the original and reissued patent, will you state the difference?

Answer. The patents were both for the same purpose and preferred by the same machine, substantially; the difference arising in the modification caused by the general improvement in the mode of forming machinery during the period of time since the patent was issued; the progress of the better construction of machinery within my recollection in the last fifteen years has been very great, and the modification and improvement on the steam engine, as its history will show, is much greater than the improvements in the parts so formed, of the parts in comparison with the machines of Woodworth described in 1828 and 1845. I might also instance the printing press and its improvements. The two specifications being for planing, tongueing, and grooving a board or plank at one operation, and delivering it ready for use, delivering it from the machine ready for use. I would here state that a change in the patent law required a more accurate description at the time of the reissue than was required at the time of the original grant.

The recent law requiring each piece to be marked by a letter or figure, and described in the specification, which has added much to the length of the amended specification; but I do not find in any part of the amended specification so much matter contained in the same number of words, setting forth the points of the invention of William Woodworth, as is contained in the specification of 1828. The specification of 1828 describing the same machine as the amended specification of 1845.

Question. Are you acquainted with the published book known as the Repertory of Arts?

Answer. I am, sir.

Question. Have you read in the 10th volume of said work the description of certain criticisms or suggestions of one Samuel Bentham, to be found in said volume in pages 302, 303, 304, and 305; if you answer yes, will you state what criticisms or suggestions he made at said pages?

Answer. I am acquainted with the work and have read the description of Samuel Bentham, in which he proposes to plane and groove all kinds of material by a rasping motion performed by circular saws of great thickness, or burs of great width, or a series of plates or rings placed side and side and screwed on a shaft, the periphery of these rings being of the form of circular saws. He also proposes using these saws or burs of different dimensions on the same shaft by which singular longitudinal figures are to be produced, such as tongueing and grooving, facing boards and mouldings, which will be according to the different dimensions on the same shaft, and form of the cutting edges or teeth of these circular plates. The invention being applicable to metals and hard boards not having a resinous gum in them. As boards having a resinous gum will, as I have found in practice, choke up the teeth and stop the operation; and in the description of Mr. Bentham his operations all act in the opposite direction on the material to that described by Woodworth; he also describes the use of a circular saw by which he forms a tongue by five distinct operations in the following manner; he first cuts a seam in the side or edge of the board of the required depth of the rebate; he then cuts at right angles to this cut a seamed score to the depth of the former cut, by which he takes out a square slip forming a rebate; a second operation on the opposite side of the board forms a second rebate; the two together form the tongue to cut a groove or channel; a circular saw, or tool, as I call it, he says of a thickness requisite to form the breadth of the groove, the depth being determined as before. The foregoing being a general description of that claimed to be the invention of Mr. Bentham, described upon the pages referred to.

Question. Do you find in the said description any analogy to the machine patented to Wm. Woodworth on the 27th December, 1828?

Answer. I do not find any description in the foregoing pages of an operation which will plane and reduce to a thickness and width boards or plank at one operation ready for use; I do not find any organized machine described in said pages similar or analogous to the machine patented to Woodworth. JAMES E. SERRELL.

Sworn and subscribed before me, this 30th day of April, 1851.

J. W. NELSON,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, John W. Nelson, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed 1st March, 1817; and an act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness resides more than one hundred miles from the place of trial of said causes.

I further certify, that a notification of the time and place of taking the said deposition was made out and served on the attorney for the defendants to be present at the taking of deposition, and to put interrogatories if he or they might think fit.

I further certify, that on the 28th, 29th, and 30th day of April, A. D. 1851, I was attended by George W. Sickles, counsel for the plaintiff, and by the witness, who [was] of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness who subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of transmitting the same with my own hand to the court for which the same was taken.

I further testify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

[L. S.] In testimony whereof I have hereunto set my hand and seal, this 30th day of April, anno domini 1851, and of the independence of the United States

JOHN W. NELSON, *U. S. Commissioner,*
Circuit court, U. S., for the southern district of New York.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, John W. Nelson, clerk of the circuit court of the United States of America, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of John W. Nelson, whose name is subscribed to the annexed depositions, and that the signature to the same is in his proper handwriting.

And I do further certify, that he was at the time of signing the same a United States commissioner, duly appointed under and by virtue of the acts of Congress in such behalf made and provided by the circuit court of the United States of America, for the southern district of New York.

[SEAL.] In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, this nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of these United States the seventy-fifth.

JOHN W. NELSON, *Clerk.*